

EXHIBIT 1

**UNREDACTED VERSION
OF DOCUMENT SOUGHT
TO BE SEALED**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,)
Plaintiff,)
vs.) Case No.
UBER TECHNOLOGIES, INC.;) 17-cv-00939-WHA
OTTOMOTTO, LLC; OTTO TRUCKING LLC,)
Defendants.)
_____)

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VIDEOTAPED DEPOSITION OF MICHAEL J. WAGNER

San Francisco, California

Friday, September 22, 2017

Volume 1

Reported by:

MARY J. GOFF

CSR No. 13427

Job No. 2714429

PAGES 1-145

1 UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF CALIFORNIA 3 SAN FRANCISCO DIVISION 4 5 _____ 6 WAYMO LLC,) 7 Plaintiff,) 8 vs.) Case No. 9 UBER TECHNOLOGIES, INC.;) 17-cv-00939-WHA 10 OTTOMOTTO, LLC; OTTO TRUCKING LLC,) 11 Defendants.) 12 _____ 13 14 HIGHLY CONFIDENTIAL 15 16 Videotaped Deposition of MICHAEL J. WAGNER, 17 Volume I, taken on behalf of Defendants, 18 at Morrison & Foerster, 425 market Street, 19 33rd Floor, San Francisco, beginning at 20 9:34 a.m. and ending at 12:30 p.m., on 21 September 22, 2017, before MARY GOFF, Certified 22 Shorthand Reporter No. 13427. 23 24 25	1 APPEARANCES CONTINUED: 2 3 For Defendants Uber and Ottomotto 4 Morrison & Foerster LLP 5 BY: RACHEL S. DOLPHIN 6 Attorney at Law 7 425 Market Street 8 33rd Floor 9 San Francisco, California 94105 10 rdolphin@mofo.com 11 415-268-7263 12 13 For Defendant Otto Trucking LLC 14 Goodwin Procter LLP 15 BY: BRETT SCHUMAN 16 Attorney at Law 17 Three Embarcadero Center 18 San Francisco, California 94111 19 bschuman@goodwinlaw.com 20 415-733-6021 21 22 Also Present 23 Kevin Foor, Videographer 24 25		
Page 2	Page 4		
1 APPEARANCES: 2 3 For Plaintiff 4 Quinn Emanuel Urquhart & Sullivan, LLP 5 BY: DAVID EISEMAN 6 Attorneys at Law 7 50 California Street 8 22nd Floor 9 San Francisco, California 94111 10 davideiseman@quinnmanuel.com 11 415-875-6600 12 13 For Defendant Uber 14 Susman Godfrey LLP 15 BY: MATTHEW R. BERRY 16 Attorney at Law 17 1201 Third Avenue 18 Suite 3800 19 Seattle, Washington 98101 20 mberry@susmangodfrey.com 21 206-373-7394 22 23 24 25	1 I N D E X 2 3 WITNESS EXAMINATION 4 MICHAEL J. WAGNER 5 Volume I 6 BY MR. BERRY 7, 142 7 BY MR. SCHUMAN 126 8 9 10 EXHIBITS 11 NUMBER DESCRIPTION PAGES 12 Exhibit 2271 Expert Report of 18 13 Michael J. Wagner, 8/24/17 14 Exhibit 2272 Expert Reply Report of 18 15 Michael J. Wagner, 9/14/17, Vol A 16 Exhibit 2273 Project Rubicon, 2019 52 17 Volume Recommendation, 5/20/16 18 Exhibit 2274 Defendants' Second Supplemental 91 19 Responses to Waymo's First Set of 20 Common Interrogatories Nos. 1-3 21 Exhibit 2275 Kit for OTR Trucking Market 98 22 23 PREVIOUSLY MARKED EXHIBITS: 24 Exhibit 299 NewCo Review, Qi Exhibit 299 69 25	Page 3	Page 5

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1	San Francisco, California		1	When were you first retained?	09:36:35
2	Friday, September 22, 2017		2	A Well, I was first contacted on June 13 of	09:36:37
3	9:34 a.m.		3	2017, to run conflicts to see if I could be	09:36:41
4	THE VIDEOGRAPHER: Good morning. We are		4	considered as an expert for Waymo.	09:36:45
5	going on the record at 9:34, on September 22 of the	09:34:29	5	I -- then I had a more substantive	09:36:48
6	Year 2017. Please understand microphones are very	09:34:35	6	conversation on June 15. I don't think I was	09:36:50
7	sensitive, and they may pick up whispering ad	09:34:42	7	retained at that point, because I was told they were	09:36:54
8	private conversations and cellular interference.	09:34:44	8	still considering another expert besides me. And	09:36:56
9	Please turn off your cell phones or place	09:34:49	9	then I think shortly after that I was retained, but	09:36:59
10	them away from the microphones, as they may	09:34:51	10	I can't give you the date.	09:37:02
11	interfere with the audio. Audio and video recording	09:34:54	11	Q Within days?	09:37:03
12	will continue to take place unless all parties agree	09:34:57	12	A Within days.	09:37:04
13	to go off of the record.	09:35:01	13	Q Who retained you?	09:37:05
14	This is Disc 1, Volume I in the video	09:35:03	14	A The -- the law firm of Quinn Emanuel.	09:37:09
15	deposition of Michael J. Wagner, taken by counsel	09:35:06	15	Q And, sir, when you did you start work in	09:37:11
16	for Defendants in the matter of Waymo LLC v. Uber	09:35:10	16	this case?	09:37:14
17	Technologies. It's filed in the United States	09:35:16	17	A I would say I probably didn't do much in	09:37:14
18	District Court, for the Northern District of	09:35:19	18	the way of substantive work until July of this year.	09:37:17
19	California, Case No. 17-cv-00939-WHA.	09:35:21	19	Q And, sir, your hourly rate is 895 an hour;	09:37:23
20	This is being taken at Morrison &	09:35:29	20	is that right?	09:37:27
21	Foerster. They're at 425 Market Street in	09:35:31	21	A Yes.	09:37:28
22	San Francisco. My name is Kevin Foor, and I am here	09:35:35	22	Q And is it also correct that you receive a	09:37:28
23	with Mary Goff-Sharma, and we are from Veritext.	09:35:40	23	portion of Litinomics' revenues?	09:37:31
24	I'm not related to any party nor am I financially	09:35:45	24	A For other professionals that bill time to	09:37:33
25	interested in the outcome in any way.	09:35:49	25	this project, depending on their level, I get a	09:37:35

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1	Counsel and -- and all present in the	09:35:52	1	percentage of what they charge and we collect.	09:37:38
2	room, everyone attending remotely will now state	09:35:54	2	Q And, sir, how many individuals at	09:37:40
3	their appearances for the record, please	09:35:58	3	Litinomics have billed time to this matter?	09:37:42
4	MR BERRY: Matt Berry from Susman Godfrey	09:36:01	4	A Eight.	09:37:45
5	on behalf of Uber	09:36:03	5	Q How many hours total have you billed?	09:37:49
6	MS DOLPHIN: Rachel Dolphin, Morrison &	09:36:04	6	A Through our last bill, which is	09:37:52
7	Foerster, on behalf of Uber and Ottomotto	09:36:05	7	September 15, I have billed 64 hours.	09:37:54
8	MR SCHUMAN: Brett Schuman, from Goodwin	09:36:09	8	Q That -- those hours run through	09:38:01
9	Procter, on behalf of Otto Trucking LLC	09:36:09	9	September 15?	09:38:03
10	MR EISEMAN: David Eiseman, from Quinn	09:36:12	10	A Through September 15.	09:38:04
11	Emanuel, on behalf of Plaintiff Waymo	09:36:13	11	Q What about the eight others at Litinomics?	09:38:07
12	MICHAEL J WAGNER,	09:36:16	12	How many hours have they billed total?	09:38:12
13	being first duly sworn or affirmed to testify to the	09:36:16	13	A Well, the total billing through that date	09:38:14
14	truth, the whole truth, and nothing but the truth,	09:36:16	14	is 1,189.4 hours. So subtract 64 from that, and	09:38:16
15	was examined and testified as follows:	09:36:16	15	that's the others.	09:38:24
16		09:36:16	16	Q And what are the billing rates for the	09:38:25
17	EXAMINATION BY COUNSEL FOR THE DEFENDANTS	09:36:16	17	others? What's -- what's the range there?	09:38:27
18	BY MR BERRY:	09:36:25	18	A You know, I would say the senior-most	09:38:30
19	Q Good morning, sir	09:36:26	19	person that billed time besides me is around 550 an	09:38:33
20	A Good morning	09:36:26	20	hour, and probably the cheapest is about \$175 an	09:38:36
21	Q Could you please state your name?	09:36:27	21	hour.	09:38:41
22	A Michael Joseph Wagner	09:36:29	22	Q Sir, what's the total dollar value of the	09:38:41
23	Q I would like to talk to you first about	09:36:30	23	billing in this case?	09:38:44
24	when you were retained, some of the details about	09:36:33	24	A \$418,437.	09:38:45
25	your retention here	09:36:34	25	Q Sir, is this the first time that you have	09:38:56

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1 been retained by Quinn Emanuel?	09:38:58	1 And I believe the award in the case was 900 million.	09:41:01
2 A No.	09:39:00	2 Q And who was your client in that case or --	09:41:08
3 Q How many times have you been?	09:39:01	3 A That's --	09:41:11
4 A You know, I -- I -- I have been in this	09:39:03	4 Q -- which side were you on?	09:41:11
5 business for 40 years. You know, I would say I have	09:39:04	5 A -- I was on the Plaintiff's side --	09:41:12
6 probably done 10 to 12 cases with Quinn Emanuel.	09:39:07	6 Q Okay.	09:41:14
7 Q What about -- have you been retained by	09:39:11	7 A -- and -- like, I can remember the venue	09:41:14
8 Google before?	09:39:13	8 was in Oregon. And you can probably find it on my	09:41:18
9 A Yes.	09:39:13	9 CV. And if you showed me on -- my CV, I could find	09:41:23
10 Q How many times?	09:39:14	10 it for you.	09:41:24
11 A One -- I know for sure once. I think	09:39:14	11 Q And, sir, you testified at trial in that	09:41:25
12 twice.	09:39:23	12 case?	09:41:28
13 Q And, sir, do you have a deposition	09:39:24	13 A I did.	09:41:29
14 scheduled for tomorrow?	09:39:26	14 Q And the award, you said, was how much?	09:41:30
15 A No. I have a deposition scheduled for	09:39:28	15 A I think it was -- I think -- my	09:41:31
16 Monday, Tuesday, and Friday of next week.	09:39:30	16 recollection was 900 million.	09:41:32
17 Q And where is the deposition on Monday?	09:39:33	17 Q And, sir, you have had your opinions	09:41:36
18 A I don't know the location yet. I'm hoping	09:39:35	18 excluded by courts in past cases; is that correct?	09:41:43
19 it's the Bay Area, but it may be Texas. I still	09:39:37	19 A I have had -- in -- in one case in my	09:41:47
20 haven't been told.	09:39:42	20 career I was completely excluded. I have a number	09:41:48
21 Q And would you have been available to sit	09:39:43	21 of the cases where some portions of my work were not	09:41:51
22 for a deposition tomorrow?	09:39:46	22 permitted to be introduced at trial.	09:41:54
23 A It's possible I could have set tomorrow.	09:39:48	23 Q In which case was it completely excluded?	09:41:56
24 Q Sir, are you submitting a Declaration in	09:39:51	24 Were you completely excluded?	09:41:59
25 support of Waymo's opposition to the Daubert motion	09:39:53	25 A Intellectual Ventures versus Xilinx.	09:41:59
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1 against you?	09:39:57	1 Q In Delaware?	09:42:02
2 A No one has asked me to do that	09:39:58	2 A Yes. In front of Judge Stark.	09:42:03
3 Q You have no plan to do so?	09:40:00	3 Q And then in other cases, certain of your	09:42:08
4 A Well, I think it's due today And I think	09:40:01	4 opinions have been excluded, but not all; is that	09:42:11
5 you're going to monopolize most of my day, so I	09:40:04	5 fair?	09:42:14
6 would say probably not	09:40:07	6 A Correct. Yes, that's -- that's fair.	09:42:15
7 Q You -- you have not been asked to do --	09:40:08	7 Q And how many cases would that be?	09:42:16
8 A I --	09:40:09	8 A I -- I want to say nine or 10.	09:42:18
9 Q -- so?	09:40:09	9 Q When was the most recent one?	09:42:21
10 A -- I have not been asked	09:40:10	10 A I -- I -- I have no recollection of that.	09:42:22
11 Q Sir, how many cases have you worked on	09:40:20	11 Q Was it recently?	09:42:26
12 where you have provided a damages model in excess of	09:40:22	12 A You know, probably in the last couple of	09:42:32
13 \$1 billion?	09:40:25	13 years, but I -- I really don't have any recollection	09:42:33
14 A Probably two other cases	09:40:30	14 when the last one was.	09:42:36
15 Q What were those cases?	09:40:32	15 Q Sir, had you had an opinion excluded for	09:42:38
16 A One was the Apple/Samsung trial where	09:40:33	16 failure to consider relevant evidence?	09:42:39
17 although I was a Defendant, my initial damage claim	09:40:37	17 A Yes, that -- that was -- that was, I	09:42:44
18 in that case was in excess of a billion dollars for	09:40:39	18 think, the grounds in the Xilinx matter.	09:42:44
19 the Defendant	09:40:42	19 Q And, sir, have you had an opinion excluded	09:42:48
20 The -- I believe the Apple number was like	09:40:43	20 as not reliable?	09:42:51
21 2 3 billion So it was a significantly less, but it	09:40:46	21 A Probably. For that one portion that was	09:42:54
22 was still in excess of a billion dollars	09:40:50	22 excluded, I would think probably that was a reason	09:42:58
23 The other case was -- and I -- I	09:40:52	23 at -- at least once or twice.	09:43:01
24 apologize I can't remember the -- the -- the	09:40:57	24 Q And, sir, have you had an opinion excluded	09:43:02
25 Plaintiff, but the Defendant was DaimlerChrysler	09:40:59	25 as being too speculative?	09:43:04
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1 A Well, you cited one where it was a method	09:43:07	1 Q How many of those 2,586 documents did you	09:44:53
2 patent, and the judge sustained -- or did not grant	09:43:10	2 personally look at?	09:44:56
3 any of the Daubert motions against me except for	09:43:13	3 A Well, I only looked at -- at -- there may	09:44:57
4 one. And that was on the royalty base, and it was	09:43:15	4 be a few beyond that. I -- I looked at the	09:45:00
5 for your firm.	09:43:18	5 documents that are in Volumes 2 through 9 of my	09:45:02
6 Yeah. And that -- and he said it was	09:43:20	6 report, the ones that I'm relying upon. But I'm	09:45:05
7 speculation to apply my rate, which he wasn't going	09:43:22	7 sure I read a couple of other ones, but I can't tell	09:45:09
8 to allow the jury to hear. But I had no base	09:43:25	8 you the number.	09:45:12
9 because your client and your law firm couldn't give	09:43:28	9 Q So the documents in Volumes 2 through 9	09:45:13
10 me the -- the amount of use.	09:43:31	10 are the ones that you considered?	09:45:16
11 Q So -- so the answer to my question was	09:43:33	11 A Yes.	09:45:18
12 yes?	09:43:34	12 Q Okay.	09:45:18
13 A Yes.	09:43:35	13 A No. I relied upon.	09:45:18
14 Q And that was Judge Settle?	09:43:35	14 Q And you replied upon.	09:45:19
15 A I don't remember the name of the judge.	09:43:37	15 A All of the 2,586 documents were considered	09:45:19
16 Q Whatever the name of the judge was, he	09:43:39	16 by either me or my staff.	09:45:23
17 excluded your opinion as too speculative, correct?	09:43:40	17 Q Okay. But for the documents in Volumes 2	09:45:25
18 A Well, yeah. At -- in the royalty base,	09:43:43	18 through 9, you personally looked at each of those?	09:45:27
19 which is normally something that, you know, I don't	09:43:44	19 A Yes.	09:45:30
20 have much, you know, opinion about, it's -- it's	09:43:47	20 Q And those are the documents that you're	09:45:30
21 normally something that's assembled and I apply a	09:43:49	21 relying on?	09:45:32
22 rate to. The -- what I provide value to is the	09:43:52	22 A Correct.	09:45:32
23 rate, and that was not excluded.	09:43:55	23 Q And if they're -- the document is not	09:45:33
24 Q Sir, that was your opinion in that case	09:43:57	24 identified in Volumes 2 through 9, you're not	09:45:34
25 that was excluded, right?	09:43:59	25 relying on it; is that fair?	09:45:38

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1 A Well, I didn't have an opinion on use, so	09:44:00	1 A No. Because I -- I also submitted a Reply	09:45:41
2 no, there was no opinion on use.	09:44:02	2 Report. And if there's another document at Tabs B	09:45:44
3 I was instructed by you -- your firm to	09:44:04	3 or C, I'm relying upon that as well. With that	09:45:47
4 assume all of the products sold by Ford, practiced	09:44:08	4 clarification, the answer is yes.	09:45:49
5 the method.	09:44:12	5 Q Okay. So let's move on to your Reply	09:45:51
6 Q Sir, it was your opinion that was	09:44:13	6 Report then. And it identifies 3,017 documents	09:45:52
7 excluded, right?	09:44:15	7 considered, right?	09:45:56
8 A With -- with that explanation, yes.	09:44:16	8 A Correct.	09:45:58
9 Q And you're saying it wasn't your fault?	09:44:18	9 Q And does that list of 3,017 documents	09:45:58
10 A No. Because I asked them. I asked them	09:44:20	10 include all the ones that you identified in your	09:46:02
11 to do a survey. They didn't. I knew that -- I	09:44:22	11 Opening Report?	09:46:05
12 knew -- I know what you have to do on method	09:44:25	12 A I would assume so, yes.	09:46:11
13 patents, and -- and I knew it was a problem.	09:44:27	13 Q So the difference between the two that --	09:46:18
14 Q Did you sign your report in that case?	09:44:30	14 the additional documents considered would be 431, is	09:46:20
15 A I did.	09:44:32	15 that about right?	09:46:24
16 Q And it was your opinion, right?	09:44:33	16 A I haven't done the math. But every number	09:46:26
17 A The opinions that I expressed in my report	09:44:35	17 you have said so far is accurate, so I'll accept	09:46:28
18 were mine.	09:44:37	18 your --	09:46:30
19 Q Sir, in this case in your report you have	09:44:38	19 Q Is --	09:46:31
20 a portion where it has "Documents Considered,"	09:44:40	20 A -- representation.	09:46:31
21 right?	09:44:42	21 Q -- is there a way to identify which are	09:46:31
22 A Correct.	09:44:43	22 the new documents that you looked at for your	09:46:34
23 Q And you identified 2,586 documents in your	09:44:44	23 written -- Reply Report?	09:46:36
24 Opening Report that were considered, right?	09:44:48	24 A Yes, I could -- I guess you could do a	09:46:40
25 A Correct. Listed on 131 pages.	09:44:50	25 document compare between the two.	09:46:41

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1 Q Let me go ahead and hand you copies of 2 your reports. 09:46:43	1 A I believe that's correct. Because if -- 09:50:27
3 (Exhibit 2271 was marked for 4 identification and is attached to the transcript.) 09:47:25	2 if it was a document that already existed, I think 09:50:28
5 Q (BY MR. BERRY) Sir, I have handed you 6 what's been marked as Exhibit 2271, which is your 7 Opening Report, and Exhibit 2272, which is your Rely 8 Report. 09:47:51 09:47:53 09:47:56 09:48:00	3 the reference in the footnote would be to one of the 4 original Volumes 2 through 9. 09:50:31 09:50:34
9 (Exhibit 2272 was marked for 10 identification and is attached to the transcript.) 09:48:01 09:48:01	5 Q And, sir, for your Reply Report we have 09:50:36 6 your list of documents considered. But if we want 09:50:38 7 to find out which documents you actually relied 09:50:41 8 upon, those are the documents in Tabs B and C? 09:50:43
11 Q (BY MR. BERRY) Do you have those? 09:48:02	9 A Yes. 09:50:46
12 A I do. 09:48:03	10 Q And -- and no other document? 09:50:47
13 Q Would you look at Exhibit 2272, your Reply 14 Report, and show me how we can identify which are 15 the new documents you considered for your reply. 09:48:03 09:48:06	11 A Correct. 09:50:48
16 A Well, I would have to also use 17 Exhibit 2271. 09:48:13 09:48:15	12 Q Sir, you signed your Opening Report on 09:50:59 13 August 24, 2017; is that right? 09:51:01
18 Q Absolutely. 09:48:17	14 A Yes. 09:51:04
19 A The both lists are in alphabetical order. 09:48:19	15 Q And Mr. Bratic served his report on 09:51:04 16 September 7, 2017? 09:51:07
20 So again, you would have to go through and do a 21 document compare. 09:48:59 09:49:03	17 A Yes. 09:51:08
22 And whenever a new document with that 23 letter is included in Exhibit 2272, that would be in 24 addition to a document that was on the list of 25 documents considered in Exhibit 2271. 09:49:15	18 Q And then you served a Reply Report on 09:51:09 19 September 14, 2017, right? 09:51:13
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1 Q But sitting here right now, sir, you can't 2 tell us what the new documents are that you 3 considered for your Reply Report? 09:49:19 09:49:21 09:49:24	21 Q And in your Reply Report, sir, you say 09:51:15 22 that, None of the opinions expressed by Mr. Bratic 09:51:18 23 or Mr. Malackowski has caused me to change the 09:51:21 24 opinions and conclusions -- and conclusions that I 09:51:24 25 reached in my Opening Report. And I continue to 09:51:26 Page 20
4 A Well, I mean, I could tell you a small 5 subset of them. As an example, you know, 09:49:26 09:49:28	
6 Mr. Malackowski's report and Mr. Bratic's report, I 7 know those are new. 09:49:30 09:49:34	1 hold the opinions and conclusions expressed in my 09:51:30 2 Opening Report. 09:51:33
8 Q Do you, sir, have a list of documents -- 09:49:35	3 And that was true, sir, when you submitted 09:51:34 4 your Reply Report, right? 09:51:36
9 additional documents that you considered for you 10 your Reply Report? 09:49:37 09:49:40	5 A Yes. 09:51:39
11 A Nothing has been prepared for at least my 12 view, except for the document that's attached as 13 Tab 4 to Exhibit 2272. 09:49:40 09:49:47	6 Q And does that remain true today? 09:51:40
14 Q And the only way to use your reports to 15 identify the new documents you considered for the 16 Reply Report is to go through 3,000 documents to try 17 to match them up? 09:49:50 09:49:54 09:49:56	7 A Yes. 09:51:42
18 A No. There's another way. And probably 19 the more important way to determine the new 20 documents I'm replying upon is, again, by looking at 21 documents that are in Tabs B -- or Lines B and C or 22 looking at the footnotes in the report that refer to 23 a volume tab reference with a "B" or a "C" in it. 09:50:02 09:50:04 09:50:08 09:50:12	8 Q Sir, the Stroz report has recently been 09:51:46 9 produced. Have you seen a copy of that? 09:51:50
24 Q So all documents in Tabs B and C are new 25 documents that you considered for your Reply Report? 09:50:22 09:50:25	10 A I don't believe so. 09:51:52
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	11 Q Do you know what the Stroz report is? 09:51:52
	12 A I don't believe so. Oh -- oh, yeah. I'm 09:51:54
	13 sorry. Yes, I do. 09:51:56
	14 Q And -- 09:51:57
	15 A I know what it is. I have not seen it. 09:51:58
	16 Q Has your team seen it? 09:52:00
	17 A To my knowledge, they have not. They have 09:52:02
	18 not communicated that to me, if they have. 09:52:05
	19 Q And that's not something that you need for 09:52:05
	20 the opinions that you rendered in -- in your -- in 09:52:08
	21 your report, right? 09:52:09
	22 A Well, I -- 09:52:11
	23 MR. EISEMAN: Object as to the form. 09:52:12
	24 A -- I think in my first report I did 09:52:13
	25 actually say that if -- if I had that information, I 09:52:15
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1 would look at it, and it may or may not affect my 2 opinion. I -- I don't know whether it would be. 3 Q (BY MR. BERRY) Sir, have you asked for a 4 copy of the Stroz report? 5 A No. 6 Q And, sir, a couple of Excel files were 7 produced yesterday. Did you receive a copy of them? 8 A Could you restate your question? 9 Q A couple of Excel files were produced 10 yesterday. Have you received a copy of them? 11 A Oh, from -- by -- produced by you? No, I 12 have not seen them. 13 Q Okay. Has your team -- have you received 14 them? 15 A Not to my knowledge. 16 Q Has your team received them? 17 A Not to my knowledge. 18 Q Are you aware of -- about them? 19 A No. 20 Q Okay. Sir, is it fair to say that as of 21 today, Waymo has not lost any profits due to any 22 misappropriation of these nine trade secrets? 23 A Yes. 24 Q And is it fair to say as of today that 25 Uber has not realized any profits due to the alleged	09:52:17 09:52:22 09:52:23 09:52:25 09:52:27 09:52:33 09:52:38 09:52:41 09:52:42 09:52:45 09:52:47 09:52:48 09:52:50 09:52:52 09:52:53 09:52:53 09:52:56 09:52:57 09:52:59 09:52:59 09:53:14 09:53:17 09:53:20 09:53:20 09:53:22	1 that modeling effort. 2 But based on the way the model was 3 constructed, I didn't believe it would be a good 4 basis for me to adjust to understand what a -- a 5 one- to-two-year early entry by your client would do 6 to Waymo's projected financial performance. 7 Q So, sir, you looked into doing a lost 8 profits model for -- on behalf of Waymo, but 9 concluded that it was not possible? 10 A Well, with the information that I had, I 11 wasn't comfortable in doing it. 12 Q I want to ask you some -- some general 13 questions about your opinions and conclusions in 14 this case. Sir, when did you assume that Uber's 15 LiDAR unit would be ready for commercialization? 16 A Well, who -- who -- can you -- whose -- 17 was it -- 18 Q Uber's. 19 A Uber's. I -- I don't know when it would 20 be ready. I think that based on the opinions I have 21 expressed, that -- they would be in 13 cities by 22 2022. 23 Q Sir, do you know the assumption that you 24 made -- let me ask a different question. 25 According to your report and the work that	09:54:23 09:54:25 09:54:27 09:54:30 09:54:33 09:54:38 09:54:43 09:54:46 09:54:48 09:54:49 09:54:51 09:54:55 09:54:58 09:55:01 09:55:05 09:55:09 09:55:13 09:55:14 09:55:15 09:55:19 09:55:23 09:55:28 09:55:29 09:55:33 09:55:36
1 misappropriation of these trade -- of these trade 2 secrets? 3 A Yes. 4 Q And, sir, you have full access to Waymo's 5 financial records; is that fair? 6 A I think that's fair. 7 Q You had access to its accounting records? 8 A If I chose to look at them, yes. 9 Q And you had access to their business 10 models? 11 A Yes. 12 Q And their forecasts? 13 A Yes. 14 Q And despite having full access to Waymo's 15 records, you don't have enough information to 16 quantify the expected future lost profits to Waymo. 17 correct? 18 A That is correct. 19 Q What are you missing? 20 A Well, I -- I want to understand how 21 they're modeling the future and the -- the model, 22 which would be the equivalent of the Rubicon model 23 for your client. 24 But -- and I talked to a -- I want to say 25 her name is Jennifer Haroon, who was kind of head of	09:53:27 09:53:29 09:53:29 09:53:31 09:53:36 09:53:38 09:53:39 09:53:42 09:53:44 09:53:46 09:53:47 09:53:47 09:53:49 09:53:49 09:53:49 09:53:52 09:53:55 09:53:59 09:54:01 09:54:02 09:54:03 09:54:05 09:54:09 09:54:12 09:54:14 09:54:17	1 you have done, when did you assume that Uber's LiDAR 2 unit would be ready for commercialization? 3 A I don't have a date. I assumed that it 4 would be ready based on the base case projections 5 made by Uber. They didn't articulate that exact 6 fact in their -- the information that I saw, so I 7 can't tell you that exact date 8 Q So you don't know? 9 A I don't know 10 Q So when did you assume that Uber's 11 software for its autonomous vehicles would be ready 12 to be commercialized? 13 A Well, again, before commercialization, it 14 would have to be. But again, since I don't have the 15 date of the -- the actual first commercialization, I 16 don't know the answer to that question 17 Q Sir, what about the -- the cameras for 18 Uber's autonomous vehicles? When did you assume 19 they would be ready for commercialization? 20 A It -- the same answer as for the software 21 That -- all of their hardware and software must be 22 operational and effective before they commercialize 23 the product 24 Q So you don't have a date? 25 A I don't have a date	09:55:38 09:55:42 09:55:45 09:55:47 09:55:54 09:55:57 09:55:59 09:56:00 09:56:02 09:56:03 09:56:05 09:56:09 09:56:10 09:56:13 09:56:15 09:56:19 09:56:21 09:56:24 09:56:26 09:56:28 09:56:31 09:56:34 09:56:37 09:56:38 09:56:40

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1 Q When did you assume that Uber would first	09:56:41	1 A I -- again, I assume they would be, but I	09:59:02
2 launch an autonomous vehicle?	09:56:44	2 don't know that. And -- and I can be corrected if	09:59:04
3 A I -- I don't have that fact memorized.	09:56:46	3 you show me more detail of the plans that your	09:59:08
4 And I don't believe, based on the information	09:56:48	4 client had that I'm relying upon.	09:59:11
5 that -- that I saw, I know the exact first city or	09:56:51	5 Q And, sir, it was not relevant to your	09:59:14
6 date that they were going to commercialize.	09:56:54	6 opinions whether or not Uber was going to be	09:59:16
7 Q Let me make it easier. In what year did	09:56:59	7 launching in 2018?	09:59:18
8 you assume that Uber would first commercialize an	09:57:02	8 A I think that's relevant to my conclusions,	09:59:20
9 autonomous vehicle?	09:57:04	9 yes.	09:59:21
10 A Well, I -- I assume that -- the only thing	09:57:08	10 Q But you just don't know one way or the	09:59:22
11 I assumed, I should say, is that by 2022, there	09:57:09	11 other whether they actually plan to do so?	09:59:26
12 would be 13 cities.	09:57:12	12 A Right. And it's not necessary. Because	09:59:27
13 I don't know if they entered all those	09:57:14	13 I'm not doing a -- a city-by-city vehicle usage, all	09:59:29
14 13 cities in 2022 or there was a rollout before	09:57:16	14 of those assumptions.	09:59:33
15 that, say, starting in 2020 and -- and '21. I don't	09:57:20	15 I'm using the assumptions that your client	09:59:35
16 know that.	09:57:24	16 used, not in connection with this litigation, for --	09:59:37
17 Q Was that relevant to your analysis?	09:57:26	17 for their both operational decisions and strategic	09:59:39
18 A No. Because I was basing my numbers on	09:57:27	18 decisions to enter this market.	09:59:42
19 what your client was forecasting as their base case.	09:57:29	19 And it's not necessary for me to know that	09:59:44
20 Q Did you ask anybody what their rollout	09:57:35	20 that level of detail because it's your client's	09:59:46
21 would be for launching the autonomous vehicles?	09:57:37	21 estimates, their belief at the time that's relevant	09:59:50
22 A I don't remember asking anyone that	09:57:40	22 to me.	09:59:54
23 question.	09:57:42	23 Q Sir, did you look to see whether the	09:59:55
24 Q Did you re -- review any documents that	09:57:43	24 information you have relied upon assumed that Uber	09:59:58
25 had a proposed launch schedule for Uber's autonomous	09:57:43	25 would be launching in 2019?	10:00:01
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1 vehicles?	09:57:47	1 A Well, since they're going to be buying	10:00:05
2 A You know, I think in some of the Rubicon	09:57:48	2 15,000 cars, I -- I believe they would be launched.	10:00:07
3 models that I have looked at, it's -- it's possible	09:57:50	3 But -- but I don't know that, and I don't know	10:00:10
4 that information is in there. But that wasn't a	09:57:52	4 where --	10:00:11
5 necessary input to me to do my work, so I didn't	09:57:54	5 Q And --	10:00:11
6 focus on it.	09:57:58	6 A -- even though I have some recollection	10:00:11
7 Q So the date on which Uber would be	09:58:00	7 that they're going to be starting in the Phoenix	10:00:13
8 launching autonomous vehicles is not a necessary	09:58:03	8 area, but I -- I'm -- I'm not certain of that.	10:00:16
9 input for your model?	09:58:04	9 Q And in the work that you did for your	10:00:18
10 A No. Because your client for business	09:58:06	10 opinions in this case, when you mentioned Uber	10:00:20
11 purposes modeled all of that for me.	09:58:07	11 launching, are you assuming launching with or	10:00:24
12 Q Sir, how many autonomous vehicles did you	09:58:15	12 without a safety driver?	10:00:25
13 assume that Uber would launch by the year 2017?	09:58:18	13 A Again, the assumption I have is whatever	10:00:29
14 A 2017? I don't know. I -- I think that --	09:58:22	14 your client was planning on doing. I would assume	10:00:32
15 the only recollection I have, a number between 2017	09:58:28	15 that they would initially launch with a safety	10:00:34
16 and 2022, was that Uber was going to purchase around	09:58:33	16 driver.	10:00:38
17 15,000 vehicles in 2019.	09:58:36	17 Q At what point would they convert over to	10:00:39
18 Q How many autonomous vehicles did you	09:58:40	18 no safety driver?	10:00:42
19 assume that Uber would launch in 2018?	09:58:42	19 A When they believed that they would have a	10:00:44
20 A Again, I -- I don't know that. It's --	09:58:45	20 vehicle that was safe enough that a safety driver	10:00:46
21 it's the same number that your client was	09:58:47	21 was no longer needed.	10:00:49
22 forecasting in their base case.	09:58:49	22 Q And what year would that be, sir?	10:00:50
23 Q For Uber operating in 2018, did you assume	09:58:52	23 A Again, I don't -- I didn't memorize that	10:00:53
24 that Uber would have -- be operating an autonomous	09:58:57	24 fact. I don't know.	10:00:55
25 vehicle?	09:59:01	25 Q And the presence of a safety driver in an	10:00:56
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1 autonomous vehicle is very important for the	10:00:58	1 A I -- I think it was either the end of this	10:03:04
2 financial projections of profits --	10:01:00	2 year or the beginning of next year.	10:03:06
3 MR EISEMAN: Object --	10:01:04	3 Q Would that be with or without a safety	10:03:08
4 Q (BY MR BERRY) -- for Uber, right?	10:01:04	4 driver?	10:03:11
5 MR EISEMAN: -- objection as to form	10:01:05	5 A I think it's with a safety driver.	10:03:12
6 A I -- I agree that's an important input,	10:01:06	6 Q At what point did you assume that Waymo is	10:03:14
7 because drivers is the most significant cost in	10:01:08	7 going to get rid of a safety driver?	10:03:16
8 Uber's service	10:01:13	8 A I didn't make any such assumption.	10:03:18
9 Q (BY MR BERRY) And, sir, you can't say	10:01:14	9 Q Sir, do you know if it's legal or illegal	10:03:21
10 sitting here right now at what point you assumed	10:01:15	10 in Pittsburgh to carry passengers with an autonomous	10:03:23
11 Uber would start not using safety drivers?	10:01:19	11 vehicle without a safety driver?	10:03:27
12 A Well, again, the only thing -- again, the	10:01:22	12 MR EISEMAN: Objection as to form.	10:03:29
13 assumption I made is that -- that all of the	10:01:24	13 A I -- I don't know. But -- but based on	10:03:30
14 assumptions that your client made are reasonable,	10:01:27	14 everything that I understand, it would -- my	10:03:32
15 conservative, and was the best judgment of your	10:01:33	15 expectation as of today, it would be illegal.	10:03:34
16 client at the time they made the projections	10:01:37	16 Q (BY MR. BERRY) And, sir, do you know in	10:03:36
17 So you keep saying it's my assumption	10:01:42	17 Singapore whether it would be legal or illegal to	10:03:38
18 I'm just assuming that your client, who knows this	10:01:44	18 carry passengers in an autonomous vehicle without a	10:03:42
19 industry far better than I would -- and this would	10:01:47	19 safety driver?	10:03:45
20 be a very different conversation if I was making up	10:01:50	20 A I --	10:03:45
21 assumptions -- that -- that this is the best	10:01:54	21 MR EISEMAN: Objection as to form.	10:03:46
22 evidence that I have	10:01:56	22 A -- I don't.	10:03:47
23 Q Sir, how many trips did you assume that	10:01:57	23 Q (BY MR. BERRY) Did --	10:03:48
24 Uber would make with an autonomous vehicle in 2017? 10:02:00		24 A Not as of today.	10:03:48
25 A Again, it's the -- I assumed that the	10:02:03	25 Q Did you look into that question?	10:03:49
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1 number that's in the model -- the Rubicon model is	10:02:06	1 A No.	10:03:51
2 the number that would have occurred. That detail	10:02:08	2 Q What did you assume Uber's cost per	10:03:53
3 hasn't been provided to me.	10:02:12	3 autonomous vehicle would be when it launched?	10:03:57
4 Q Sir, did you assume there would be any	10:02:13	4 A I don't think I have that fact memorized.	10:04:02
5 trips made in 2017 with an autonomous vehicle?	10:02:16	5 I think I have -- I have seen some information on	10:04:04
6 A I -- I didn't make any such assumption.	10:02:19	6 that subject, but it's whatever the cost is that was	10:04:07
7 But if you communicate to me and show me that your	10:02:21	7 in this base plan.	10:04:10
8 client did have that in the base plan I'm using,	10:02:25	8 Q And whatever that cost was is not relevant	10:04:11
9 then the answer is yes. If they're not, the answer	10:02:29	9 to the method that you took in this?	10:04:14
10 is no.	10:02:31	10 A Well --	10:04:15
11 Q And it -- that level of detail was not	10:02:32	11 Q -- case?	10:04:15
12 relevant to what you did to arrive at your opinions	10:02:34	12 A -- well, it's relevant to, but it's not	10:04:15
13 in this case; is that fair?	10:02:37	13 necessary that I understand it or critique it or	10:04:18
14 A Yeah. I would be wasting my client's	10:02:38	14 accept it.	10:04:22
15 money if I went to that level of detail in the	10:02:41	15 Because I -- I judge, as an expert, that	10:04:22
16 model.	10:02:44	16 your client, who has sophisticated financial people	10:04:25
17 Q Sir, who did you assume Uber's competitors	10:02:45	17 who use teams of experts to vet and come up with the	10:04:27
18 would be in 2018 with an autonomous vehicle?	10:02:47	18 assumptions in the model, were far more informed and	10:04:31
19 A Google.	10:02:52	19 qualified to make those assumptions than me.	10:04:35
20 Q Who else?	10:02:52	20 Q And, sir, when you say "teams of experts,"	10:04:38
21 A I mean -- I think -- I think the only one	10:02:53	21 what teams of experts are you referring to?	10:04:40
22 that would probably have operations at that time	10:02:55	22 A It -- it's the people listed on the	10:04:41
23 would be Waymo, slash, Google.	10:02:57	23 project you -- you -- Rubicon documents.	10:04:43
24 Q When did you assume that Waymo would	10:02:59	24 Q Who are those people?	10:04:46
25 launch its autonomous vehicle?	10:03:01	25 A I don't have those memorized. If you show	10:04:47
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1 me documents behind Volume 5, Tab 9, I can give you	10:04:49	1 launching. But as soon as they launch, I assume	10:06:41
2 a list	10:04:54	2 they're going to charge for their service.	10:06:44
3 Q How did you assume that the cost of Uber's	10:04:54	3 THE COURT REPORTER: Wait.	10:06:45
4 autonomous vehicle would change over time?	10:04:58	4 Q (BY MR. BERRY) And, sir, you just don't	10:06:45
5 A It would decrease significantly	10:04:59	5 know what year it's going to be?	10:06:46
6 Q By how much?	10:05:01	6 A Yeah. Again, I would expect it's before	10:06:48
7 A Again, I don't have that fact memorized	10:05:02	7 2019. But exactly when, I don't know.	10:06:52
8 Q Sir, in what year did you assume that Uber	10:05:10	8 Q And the level of expected revenues by year	10:06:54
9 would first make a profit off its autonomous	10:05:13	9 for Uber's autonomous vehicle program was not	10:06:57
10 vehicles?	10:05:16	10 relevant to the type of analysis you did?	10:07:00
11 A Again, I -- I don't know that fact I	10:05:18	11 A Well, no. It's relevant. But it's not	10:07:02
12 don't know I have seen that detail I have only	10:05:20	12 necessary for me to know and -- and understand that	10:07:04
13 seen net present value calculations, the results of	10:05:23	13 level of detail.	10:07:06
14 those	10:05:25	14 Q Sir, did you personally try to project	10:07:14
15 I -- I do know based on my experience	10:05:27	15 Uber's profits going into the future?	10:07:18
16 that -- that they're going to lose money for a	10:05:28	16 A No.	10:07:20
17 while, and then eventually they will make money	10:05:31	17 Q Did you, sir, try to project Uber's	10:07:21
18 Q Sir, at what point are they going to turn	10:05:35	18 revenues going into the future?	10:07:23
19 it around and start making a profit?	10:05:37	19 A No.	10:07:25
20 A Again, I don't recall seeing that level of	10:05:40	20 Q Sir, in which cities did you assume that	10:07:29
21 detail	10:05:40	21 Uber would launch in 2018?	10:07:35
22 Q You just don't know?	10:05:42	22 A Again, I -- I have seen a schedule of	10:07:38
23 A I don't know	10:05:45	23 that, and I don't know the order and time of -- of	10:07:40
24 Q Can you say whether they're going to make	10:05:46	24 their entry to different geographic markets. For	10:07:45
25 a profit or expect to make a profit in 2018?	10:05:47	25 some reason I have a recollection that Phoenix was	10:07:48
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1 A I -- I don't know that. But based on	10:05:49	1 one of the first. I mean, I know that Singapore is	10:07:50
2 everything that I understand, it would be -- I would	10:05:51	2 on that list, and that's why you asked the question.	10:07:55
3 be very surprised if they would.	10:05:52	3 And there were, you know, a dozen other	10:07:58
4 Q And, sir, have you arrived at any	10:05:54	4 cities, but -- but I -- I -- I don't remember the	10:08:00
5 conclusion on whether or not Uber is expected to	10:05:56	5 order and when they were going to start.	10:08:03
6 make a profit in 2019 --	10:05:58	6 Q In -- for that list of cities that Uber is	10:08:06
7 A No.	10:06:01	7 going to launch in, as of today, in how many cities	10:08:10
8 Q -- on -- on its autonomous vehicle?	10:06:01	8 is it legal to transport people in an autonomous	10:08:15
9 A No.	10:06:02	9 vehicle without a safety driver?	10:08:19
10 Q Sir, can you tell me what profits Uber is	10:06:06	10 MR. EISEMAN: Objection as to form.	10:08:21
11 expected to have from its autonomous vehicle program	10:06:12	11 A I -- I don't know the answer to the	10:08:22
12 in 2020?	10:06:15	12 question, but it would be my expectation that none.	10:08:24
13 A No. By -- year by year, I cannot tell	10:06:17	13 Q (BY MR. BERRY) For the work that you did	10:08:30
14 you.	10:06:20	14 in this case, sir, did you assume that Uber, through	10:08:32
15 Q And, sir, that was not relevant to the	10:06:20	15 2021, is going to have limitations on the types of	10:08:36
16 analysis you did?	10:06:22	16 roads that it can transport people -- transport	10:08:40
17 A No. It's totally relevant to -- to what	10:06:23	17 people on using its autonomous vehicle?	10:08:42
18 I'm doing, as I have explained to you a number of	10:06:26	18 A I -- I -- I think -- again, I haven't	10:08:45
19 times.	10:06:28	19 studied this, but I believe that your client did	10:08:48
20 Q So, sir, we have been talking about	10:06:28	20 model that. That -- depending on, you know, when	10:08:50
21 profits. Let's talk about revenues. When did you	10:06:30	21 they had long-range LiDAR capable of driving at	10:08:55
22 assume that Uber would get its first dollar in	10:06:32	22 greater speeds, until they had that, they would be	10:08:58
23 revenue from its autonomous vehicle program?	10:06:35	23 at launch -- on streets where they're less than	10:09:01
24 A Again, it -- to be consistent with	10:06:37	24 50 miles an hour.	10:09:05
25 previous answers, I don't know when they're	10:06:39	25 Q And, sir, did you look at that modeling?	10:09:05
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1 A I mean, I looked at some -- I didn't look 2 at the modeling. I looked at some of the 3 assumptions that they were making.	10:09:08 10:09:08 10:09:11	1 would -- again, based on what I know, I would guess 2 the third might be Tesla	10:11:05 10:11:09
4 Q And were those assumptions reasonable?	10:09:13	3 Q That's just a guess?	10:11:12
5 A Again, based on my reviewing them, they --	10:09:14	4 A Well, I know that they have autonomous 5 vehicle capabilities I understand that they are	10:11:14 10:11:16
6 they looked reasonable to me, but I'm not an expert	10:09:16	6 not to the Level 4, Level 5 capability And they	10:11:19
7 in this industry.	10:09:20	7 don't even use LiDAR But I do understand they have	10:11:25
8 Q Did you ask for Waymo to -- to retain an 9 expert in the industry?	10:09:21 10:09:23	8 some plans on possibly entering this business 9 Q So, sir, LiDAR is not essential for an	10:11:28 10:11:32
10 A No.	10:09:25	10 autonomous vehicle?	10:11:34
11 Q You didn't think that one was needed?	10:09:26	11 MR. EISEMAN: Objection as to form	10:11:35
12 A Not for what I was doing.	10:09:29	12 A I think it is to do Level 4 or 5, but not	10:11:36
13 Q Sir, you were talking about possible speed 14 limitations on Uber's autonomous vehicle, right?	10:09:32 10:09:35	13 Level 3 And -- and that's been told to me by	10:11:40
15 A Yes.	10:09:38	14 technical experts That's not my professional	10:11:46
16 Q What about daytime versus nighttime? Any 17 limitations there?	10:09:38 10:09:43	15 opinion	10:11:47
18 A Yes. It -- there's weather related, and 19 there's day and nighttime as well that I have seen.	10:09:44 10:09:46	16 THE COURT REPORTER: Told to me by?	10:11:47
20 Q What's the weather-related limitations?	10:09:49	17 A By technical experts That is not my	10:11:47
21 A I -- I think -- well, it's precipitation.	10:09:50	18 professional opinion	10:11:49
22 And -- and I think that snow is a lot harder than 23 rain.	10:09:50 10:09:54	19 Q (BY MR. BERRY) So for competitors, sir,	10:11:50
24 Q And one of the cities that you assumed 25 Uber would launch in by 2022 is Chicago, right?	10:09:56 10:10:00 Page 38	20 you have mentioned Waymo and Tesla Did you assume	10:11:52
		21 that any other competitor would join the autonomous	10:11:56
		22 vehicle market by 2022?	10:11:58
		23 A No Again, I know that Ford is expressing	10:12:00
		24 some interest in this area, but I have no idea when	10:12:03
		25 their planned entry is	10:12:07
			Page 40

1 A I believe that's correct	10:10:04	1 Q The entry of competitors into the	10:12:09
2 Q And how is the weather in Chicago in the 3 wintertime going to affect Uber's profits using 4 autonomous vehicles?	10:10:04 10:10:08 10:10:09	2 autonomous vehicle market is relevant to forecasting	10:12:11
5 MR. EISEMAN: Objection as to form	10:10:12	3 future profits for Uber, correct?	10:12:17
6 A Well, with global warming and my 7 conversations with people, the winters are 8 getting -- getting a lot milder But no It can be 9 brutally cold and snowy in Chicago in the winter	10:10:13 10:10:14 10:10:16 10:10:17	4 A If they are going to enter the	10:12:19
10 Q You just know one --	10:10:22	5 transportation-as-a-service segment, yes.	10:12:22
11 THE COURT REPORTER: Wait	10:10:25	6 Q When did you assume that autonomous	10:12:26
12 A You have got to slow down	10:10:25	7 vehicles would be available for consumers to	10:12:29
13 THE COURT REPORTER: Thank you	10:10:25	8 purchase?	10:12:32
14 Q (BY MR. BERRY) You just don't know one way	10:10:25	9 A I haven't made such an assumption, but I	10:12:33
15 or the other, right?	10:10:27	10 -- I would like you to tell me that, because I'm	10:12:35
16 A I don't	10:10:29	11 probably going to be one of the first buyers, as	10:12:37
17 Q And did you -- let me ask a different	10:10:29	12 Mr. Schuman knows.	10:12:40
18 question	10:10:37	13 Q Did you assume that it would be before or	10:12:43
19 So you mentioned one potential competitor	10:10:43	14 after 2022?	10:12:44
20 to Uber is Waymo What about others? By 2022, did	10:10:45	15 A I think it'll be around then, but I don't	10:12:47
21 you assume that other competitors would be in the	10:10:50	16 -- I haven't made any assumption one way or the	10:12:49
22 autonomous vehicle market?	10:10:53	17 other.	10:12:52
23 A I -- I didn't I -- I'm not aware of	10:10:55	18 Q The -- when consumers can purchase an	10:12:53
24 seeing documents that tell me who either my client	10:10:59	19 autonomous vehicle, that would impact Uber's	10:12:58
25 or your client thought would be there I -- I	10:11:02	20 profits, correct?	10:13:01
		21 MR. EISEMAN: Objection as to form.	10:13:02
		22 A I -- I think at the margin it would, but I	10:13:04
		23 don't think it would be a significant impact.	10:13:08
		24 Q (BY MR. BERRY) And that's not something	10:13:10
		25 you have looked at, right?	10:13:11
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1 A Pardon me? 10:13:13	1 trade secret until someone could independently 10:14:56
2 Q That's not something that you looked at in 10:13:14	2 design around it I did make that assumption 10:14:58
3 this case? 10:13:15	3 Q And, sir, do you know whether today 10:15:01
4 A No 10:13:15	4 somebody had already independently developed around 10:15:01
5 Q What about accidents with autonomous 10:13:17	5 these trade secrets? 10:15:01
6 vehicles? How many accidents did you assume would 10:13:20	6 A I don't -- 10:15:04
7 happen in 2018, that resulted in death? 10:13:23	7 MR EISEMAN: Objection as to form 10:15:05
8 A I didn't make any such assumption I 10:13:26	8 A -- know -- I don't know that 10:15:05
9 don't know 10:13:28	9 Q (BY MR BERRY) Is that something that 10:15:06
10 Q Is that -- 10:13:29	10 would be relevant to your opinions? 10:15:07
11 A I understand they're going to re -- 10:13:30	11 A Yes 10:15:09
12 significantly reduce accidents overall But how 10:13:31	12 Q And why is it? 10:15:09
13 many will be caused by the autonomous vehicle and 10:13:34	13 A Well, if it was either shorter or longer 10:15:11
14 its logic, I don't know 10:13:39	14 than the numbers I have used, I would want to adjust 10:15:14
15 Q And accidents caused by autonomous 10:13:41	15 my damages accordingly 10:15:17
16 vehicles will have an impact on future regulatory 10:13:42	16 Q And if it were shorter, you would have to 10:15:19
17 constraints, fair? 10:13:47	17 reduce your damages, right? 10:15:21
18 A I think that's -- 10:13:48	18 A Well, it's an incomplete hypothetical If 10:15:23
19 MR EISEMAN: Objection as to form 10:13:49	19 they reduced it and they still used as a basis the 10:15:26
20 A -- depending on the number and severity, I 10:13:49	20 trade secret, I don't think it has any relevance to 10:15:28
21 think that's possible 10:13:52	21 what I'm doing 10:15:30
22 Q (BY MR BERRY) But that's not something 10:13:56	22 But if it really was someone who knew 10:15:31
23 that you looked at in this case? 10:13:57	23 nothing about the trade secrets and started from 10:15:33
24 A No I -- I -- I haven't seen any 10:13:58	24 scratch and -- and did design around it, that would 10:15:35
25 information on that subject that's produced in this 10:14:00	25 be very relevant to me 10:15:38

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1 case. 10:14:02	1 Q Sir, your damages opinions in this case 10:15:52
2 Q Sir, did you look at or make any 10:14:07	2 assume that the court will not enter a permanent 10:15:55
3 assumptions about how long each trade secret will 10:14:09	3 injunction, correct? 10:15:58
4 remain a trade secret? 10:14:12	4 A Yes. 10:16:00
5 A I didn't make such an assumption. I mean, 10:14:14	5 Q And you didn't do any work to figure out 10:16:01
6 I am relying upon either your client or the 10:14:16	6 what would happen or what would happen to your 10:16:04
7 technical expert retained by Waymo. I'm not making 10:14:19	7 damages opinions if the court were to enter a 10:16:06
8 that judgment call. 10:14:24	8 permanent injunction? 10:16:10
9 Q Let's take Trade Secret 9, for example. 10:14:25	9 A That's accurate. 10:16:11
10 How long did you assume for your analysis that would 10:14:27	10 Q And, sir, your damages opinions in this 10:16:12
11 remain a trade secret? That's the FAC lens. 10:14:29	11 case assume that Uber is using the nine trade 10:16:19
12 A I know which one it is. 10:14:35	12 secrets, right? 10:16:24
13 Q Okay. 10:14:37	13 A Well, they're either using it currently or 10:16:26
14 A I don't remember time. Is it .34 years? 10:14:37	14 they are going to use between now and entry to the 10:16:29
15 I -- I don't remember -- we can look at one of my 10:14:39	15 marketplace. 10:16:33
16 tables, and I can tell you. I don't have that fact 10:14:42	16 Q And if Uber, in fact, does not use at any 10:16:33
17 memorized. 10:14:45	17 time one or more of the nine trade secrets, that's 10:16:36
18 Q The time that you're referring to is the 10:14:45	18 relevant to your damages opinion, right? 10:16:38
19 time to indep -- independently develop a round, 10:14:46	19 A I do think that's relevant. 10:16:41
20 right? 10:14:49	20 Q And for example, if Uber doesn't use one 10:16:43
21 A Correct. 10:14:50	21 of the nine trade secrets and never did, there would 10:16:46
22 Q I'm asking you a different question. For 10:14:50	22 be no unjust enrichment from that, correct? 10:16:48
23 how long did you assume that would remain a trade 10:14:51	23 A I agree with you. 10:16:52
24 secret? 10:14:54	24 Q I'm going to move on to your first 10:16:57
25 A Well, I assume it would remain a train -- 10:14:54	25 opinion. Do you need a break before we do that? 10:16:59

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1 A Does the court reporter need a break? 10:17:05	1 different alternatives may take a fair amount of 10:19:14
2 THE COURT REPORTER: Just slow down, 10:17:05	2 time. 10:19:17
3 please. 10:17:05	3 But once -- once I understood what Ms. Qi 10:19:17
4 A No. If we both slow down, I don't need a 10:17:05	4 did and all the options or calculations that I could 10:19:21
5 break. 10:17:08	5 rely upon, I then made a judgment as to which of 10:19:26
6 Q (BY MR. BERRY) So let's talk, sir, about 10:17:08	6 those to rely upon. And I would say that was no 10:19:29
7 you can accelerated development opinion. My 10:17:10	7 more than a couple hours. 10:19:33
8 understanding is that they are two variables. One 10:17:13	8 Q Sir, in your Opening Expert Report you 10:19:35
9 is the value of any accelerated development and the 10:17:16	9 state with respect to unjust enrichment, it's the 10:19:38
10 second is the length of acceleration; is that fair? 10:17:20	10 Defendants' burden to prove any deductible expenses 10:19:41
11 A That is fair. 10:17:24	11 and/or apportionment that you applicable? 10:19:44
12 Q For the first variable, the value of 10:17:26	12 A Yeah, not giving you a legal opinion. But 10:19:47
13 accelerated development, sir, you obtained that 10:17:29	13 as -- as a damage expert, that's my experience in 10:19:49
14 number from a presentation that Ms. Qi prepared? 10:17:31	14 other cases. 10:19:51
15 A Ms. Qi, yes. 10:17:35	15 Q So I -- my question to you, sir, is: On 10:19:52
16 Q Qi? 10:17:36	16 what do you base that? 10:19:55
17 A I think it's pronounced Qi. 10:17:36	17 A On, I think, statue (sic) and case law. 10:19:57
18 Q And, sir, you did not independently 10:17:45	18 Q What statute? 10:20:02
19 calculate the value of accelerated development to 10:17:47	19 A I -- I don't remember. Like I say, I'm 10:20:04
20 Uber, right? 10:17:50	20 not giving you a legal expert -- a legal opinion. 10:20:04
21 A Correct. 10:17:51	21 Q So I asked you about statutes, but what 10:20:12
22 Q You relied on Ms. Qi? 10:17:51	22 case law do you base that on? 10:20:14
23 A I did. 10:17:54	23 A Again, I have seen cases that have held 10:20:17
24 Q And for the length of acceleration, you 10:17:56	24 that, but I can't -- I'm not cite -- I didn't cite 10:20:19
25 also relied on other people to give you that number? 10:17:59	25 cases in my report. 10:20:22
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1 A Correct. I have no independent opinion on 10:18:03	1 Q Sir, you have seen a trade secret case 10:20:24
2 any of those numbers. 10:18:05	2 holding that it's the Defendants' burden to 10:20:26
3 Q For Trade Secret 25 and 111, you relied on 10:18:07	3 apportion any damages? 10:20:27
4 Waymo's technical expert, Dr. Hesselink? 10:18:12	4 A No. No. I think that -- that once you 10:20:30
5 A Hesselink, yes. 10:18:15	5 establish, like, revenues, then the cost portion is 10:20:33
6 Q And for all the other trade secrets, you 10:18:16	6 what I'm talking about. 10:20:37
7 relied on Uber, right? 10:18:19	7 Or again, if there's only a piece of a 10:20:39
8 A Interrogatory answer. 10:18:22	8 product that is practicing the trade secret, you 10:20:42
9 Q So to arrive at your unjust accelerated 10:18:22	9 can't use the entire product -- or you may or may 10:20:45
10 profits opinion, you take the value of acceleration 10:18:27	10 not be able to use the entire product. And if you 10:20:48
11 from Ms. Qi, multiply that by the length of 10:18:31	11 can't, then it's the Defendants' burden to figure 10:20:52
12 acceleration, and that's how you get your number -- 10:18:35	12 out that apportionment. That's my experience. 10:20:54
13 MR. EISEMAN: Objection as to form. 10:18:37	13 Q When you wrote this in your expert report 10:20:57
14 Q (BY MR. BERRY) -- fair? 10:18:38	14 that it's the Defendants' burden for any -- to do 10:20:59
15 A Basically, yes. 10:18:39	15 any apportionment, did you have something in -- 10:21:02
16 Q Sir, how many hours did you personally 10:18:42	16 particular in mind that you based that on? 10:21:04
17 spend on your accelerated development opinion? 10:18:44	17 A No. It's just my general experience. And 10:21:07
18 A I -- I have no way to estimate that. I 10:18:48	18 unlike some of your re -- expert reports, who I 10:21:10
19 mean, I would say it was a couple of hours. 10:18:50	19 believe lawyers wrote some significant sections, I 10:21:13
20 I mean, what I do in any case is I look 10:18:54	20 wrote that section. No lawyer wrote that. That's 10:21:16
21 for the best yardsticks to determine what I have to 10:18:58	21 just my experience. 10:21:19
22 measure. And then once I do that and that's been 10:19:02	22 Q And sitting here now, you can't point to 10:21:24
23 assembled and presented to me, I make a judgment. 10:19:07	23 anything in the trade secret context that says? 10:21:27
24 That doesn't take a lot of time. 10:19:09	24 A No. And -- and if I'm correct, I would 10:21:30
25 But going through and considering the 10:19:12	25 assume my lawyers have the burden on my side to cite 10:21:32
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1 the appropriate statute or case law to the judge 10:21:36	1 Q And to the extent one was -- one was 10:24:01
2 I'm not going to do it 10:21:40	2 produced, you sure didn't look at it, right? 10:24:03
3 Q Sir, in your Opening Report you pointed 10:21:42	3 A Well, Mike Wagner didn't. And if it's on 10:24:06
4 out that you did not have a copy of Uber's Rubicon 10:21:47	4 the "Documents Considered List," then my staff 10:24:08
5 model that matches to the version that Ms. Qi used. 10:21:48	5 didn't -- didn't bring it to my attention. 10:24:11
6 right? 10:21:54	6 Q But an Uber profit and loss statement is 10:24:13
7 A That is correct 10:21:55	7 just simply not relevant to the analysis that you 10:24:16
8 Q And you knew that when you wrote your 10:21:55	8 did in this case? 10:24:16
9 report that you didn't have it, right? 10:21:57	9 A Well, yeah. As we talked about earlier, 10:24:17
10 A I knew that, yes 10:21:59	10 this business, your client isn't in yet. So that -- 10:24:19
11 Q And you didn't need the Rubicon model to 10:22:00	11 I don't think there would be a P&L. 10:24:23
12 write your Opening Report, right? 10:22:03	12 Now, they may have a P&L for the ATG 10:24:26
13 A No I -- again, I -- if I wanted to 10:22:04	13 group, but that's just going to show expenses to 10:24:30
14 change assumptions and say Mike Wagner knows more 10:22:06	14 date. 10:24:34
15 than Uber, I would need it 10:22:10	15 Q Now, you did, in fact, rely on some 10:24:40
16 I -- I didn't think even if I had the 10:22:13	16 Rubicon PowerPoints produced by Uber in this case, 10:24:43
17 model, that I would be making those judgments that I 10:22:15	17 right? 10:24:46
18 know more than they know But if I had it, I could 10:22:19	18 A I did. 10:24:47
19 better understand the logic they use to come to 10:22:22	19 Q Let me show you one that you -- or I 10:24:47
20 their numbers 10:22:25	20 believe you relied upon. 10:24:50
21 Q Let's put it this way: You were 10:22:26	21 (Exhibit 2273 was marked for 10:24:55
22 confident in the opinions in this case in your 10:22:29	22 identification and is attached to the transcript.) 10:24:55
23 Opening Report despite not having the Rubicon model? 10:22:31	23 A Thank you. 10:25:31
24 A I was 10:22:34	24 Q (BY MR. BERRY) Sir, I have handed you 10:25:35
25 Q And, sir, did you believe that you were 10:22:35	25 what's been marked as Exhibit 2273. And it's a copy 10:25:36
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1 acting reasonably when you arrived at the opinions 10:22:47	1 of a May 20, 2016 "Project Rubicon PowerPoint" 10:25:39
2 in this case, even though you didn't have the 10:22:50	2 Do you see that? 10:25:45
3 Rubicon model? 10:22:53	3 A I do 10:25:46
4 A Absolutely It doesn't get better than 10:22:54	4 Q And, sir, this is one of the documents 10:25:46
5 this I mean, we would -- you would have had a 10:22:57	5 that you relied upon in your report, right? 10:25:47
6 different Daubert motion if Mike Wagner came up with 10:22:59	6 A It is I think it's behind Tab 9 of 10:25:51
7 a model and made a whole bunch of assumptions about 10:23:05	7 Volume 5 of my report 10:25:53
8 market entry and prices and competition 10:23:06	8 Q So one of the ones that you not only 10:25:58
9 You would be all over me No I always 10:23:08	9 considered, but actually relied upon, right? 10:26:01
10 try to seek models from the parties that aren't 10:23:11	10 A Yes 10:26:04
11 prepared in anticipation of the litigation That's 10:23:17	11 THE COURT REPORTER: Wait Slow down, 10:26:04
12 the Rosetta Stone of my work And I had it here 10:23:19	12 please Repeat 10:26:04
13 So no, I am absolutely comfortable with what I did 10:23:24	13 Q (BY MR. BERRY) So, sir, it's one that you 10:26:04
14 Q Sir, who found the Qi document for you? 10:23:29	14 not only considered, but you actually relied upon? 10:26:04
15 A I -- I don't know I can tell you Greg 10:23:32	15 A Yes 10:26:04
16 Pinsonneault brought it to my attention I don't 10:23:33	16 Q Would you please turn to page 2 It's the 10:26:07
17 know if he found it or some other staff member found 10:23:35	17 "Executive Summary" And it's the page ending in 10:26:11
18 it 10:23:38	18 551 10:26:14
19 Q And, sir, you had access in this case to 10:23:46	19 A Yes 10:26:15
20 Uber's underlying financial and accounting 10:23:49	20 Q And do you see at the top -- and -- it 10:26:17
21 documents, right? 10:23:52	21 says "Goal for Today's Meeting"? 10:26:19
22 A I just think to some extent I did I 10:23:53	22 A Yes 10:26:21
23 don't remember seeing a lot Like, for example, I 10:23:55	23 Q It says, Reach consensus on appropriate 10:26:22
24 don't remember seeing an Uber financial statement 10:23:57	24 number of AVs to order in 2019 and previewed in 10:26:25
25 produced in the case 10:24:01	25 2020 10:26:30
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1	Do you see that?	10:26:32	1	they make decisions in the hundreds of millions of	10:28:14
2	A I do.	10:26:32	2	dollars based on their judgments with this	10:28:19
3	Q Sir, is it your understanding that the	10:26:33	3	information.	10:28:22
4	Rubicon model was designed to forecast the number of	10:26:35	4	Q (BY MR. BERRY) Sir, you think that this	10:28:23
5	vehicles purchased?	10:26:40	5	warning on the top right page is appropriate and	10:28:26
6	A Yes.	10:26:41	6	fair, right?	10:28:28
7	Q And that was the purpose of it, right?	10:26:41	7	A I do.	10:28:29
8	A Well, it's -- it's -- it's -- one of the	10:26:43	8	Q Let's -- please turn to page ending in	10:28:30
9	major purpose -- purposes certainly is -- as	10:26:45	9	561. And, sir, do you see at the top it says	10:28:33
10	reflected in this Executive Summary, is they're	10:26:49	10	"Recommendation, Next Steps"?	10:28:43
11	using that modeling to make this decision, which is	10:26:51	11	A Yes.	10:28:44
12	an operational decision.	10:26:54	12	Q And then under "Next Steps," the third	10:28:45
13	Q And, sir, in the top right of this page	10:26:56	13	bullet point says, Continually refresh analysis on a	10:28:47
14	there's a -- text and an orange box. Do you see	10:26:59	14	quarterly basis.	10:28:51
15	that?	10:27:02	15	Do you see that?	10:28:52
16	A Well, I see it, but I can't read it.	10:27:02	16	A I do.	10:28:52
17	Q Here. It says, Note -- you really can't	10:27:05	17	Q And did you look at the refresh analysis	10:28:52
18	read that, sir?	10:27:08	18	on a quarterly basis?	10:28:57
19	A I -- my eyes -- eyes are not good --	10:27:09	19	A No. Because you didn't produce them. I	10:28:58
20	Q Okay.	10:27:10	20	think I have looked at at least two subsequent to	10:29:01
21	A -- but -- I mean, I -- I know what it	10:27:10	21	this.	10:29:05
22	said -- I know what it says. I can't read it here	10:27:13	22	And the only thing that has happened is	10:29:05
23	though.	10:27:15	23	that your client has become more aggressive in their	10:29:06
24	Q Sir, it says, Results are highly	10:27:16	24	assumptions. They're going to enter more cities	10:29:10
25	speculative and depend on significant assumptions on	10:27:17	25	earlier than they were as of this time.	10:29:12
		Page 54			Page 56
1	cost curves and pace of technology development.	10:27:20	1	Q What was the date of the last Rubicon	10:29:15
2	Output of this analysis require commentary and	10:27:22	2	PowerPoint that you saw?	10:29:16
3	context.	10:27:26	3	A I'm saying it was in June, so it would be	10:29:19
4	Do you see that?	10:27:26	4	the next quarter	10:29:21
5	A I do.	10:27:27	5	Q Of 2016?	10:29:23
6	Q And is that your opinion as well, sir,	10:27:27	6	A Yes	10:29:24
7	that results are highly speculative and depend on	10:27:29	7	THE COURT REPORTER: Wait	10:29:25
8	significant assumptions?	10:27:34	8	Q (BY MR. BERRY) When did Uber stop using	10:29:25
9	A Well, I don't know if I would use the	10:27:35	9	its Rubicon model?	10:29:29
10	word "speculative." But I would say that the	10:27:36	10	A I -- I -- I don't know that. But I know	10:29:31
11	results were -- are uncertain, because this deal is	10:27:38	11	it was sometime between June of 2016 and today, but	10:29:32
12	a market that no one has entered yet.	10:27:41	12	I don't know that date	10:29:37
13	And you know, I have done a number of	10:27:43	13	Q Why did Uber stop using the project	10:29:37
14	cases like this. And in any of those, there's	10:27:46	14	Rubicon model?	10:29:40
15	uncertainties, and that has to be taken into	10:27:48	15	A I have no information on that subject. I	10:29:41
16	consideration.	10:27:51	16	don't know	10:29:43
17	Q So Uber considered its own project Rubicon	10:27:52	17	Q Is that relevant to your analysis?	10:29:44
18	model to be highly speculative, correct?	10:27:55	18	A It -- it may or may not be. I -- I would	10:29:47
19	MR. EISEMAN: Objection as to form.	10:27:57	19	need facts to know	10:29:49
20	A Well, no. They think based -- based on	10:28:00	20	Q If Uber stopped using the Rubicon model	10:29:49
21	all of their work, that these are the best numbers	10:28:03	21	because it was too speculative, is that relevant to	10:29:52
22	they can come up with.	10:28:07	22	your analysis?	10:29:56
23	They -- they have this qualifying	10:28:08	23	MR. EISEMAN: Objection as to form	10:30:00
24	statement, you know, on this first page, which I	10:28:09	24	A I don't think so	10:30:02
25	think is appropriate and fair. But no, they're --	10:28:12	25	Q (BY MR. BERRY) So if Uber internally	10:30:03
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1 decided the Rubicon modeling was too speculative to 2 rely upon, that is not relevant to your analysis?	10:30:05	1 A I don't know the answer to that question.	10:32:01
3 A No. Because I'm relying upon it when they 4 were using it to make -- as -- as an example right	10:30:11	2 Q Sir, would you please turn to the page	10:32:12
5 here, they are recommending 15,000s AVs to be 6 purchased from their OEMs in 2019. That is a major	10:30:17	3 ending in 566?	10:32:15
7 business decision. And this is the best information	10:30:21	4 A Yes.	10:32:18
8 they had at the time.	10:30:27	5 Q And do you see at the top of the page that	10:32:19
9 If they then subsequently decide to do 10 something else, it's not that relevant to me as of	10:30:29	6 this page is called "Launch Schedule"?	10:32:21
11 this time. Now, if I was going to be looking at 12 projections later, that might be relevant to me.	10:30:35	7 A Yes.	10:32:25
13 Q So let me reask my question, because I'm 14 not sure you answered it.	10:30:41	8 Q And the table has a bear case, a base	10:32:25
15 A Okay.	10:30:45	9 case, and a bull case?	10:32:30
16 Q My question, sir: Is it relevant to your 17 analysis in -- is it relevant to your analysis in	10:30:45	10 A Yes.	10:32:32
18 this case if Uber stopped using the project Rubicon 19 modeling because it was too speculative?	10:30:49	11 Q And in this case, sir, you used the base	10:32:33
20 MR. EISEMAN: Objection as to form.	10:30:56	12 case; is that fair?	10:32:36
21 A I think I answered that and maybe put too 22 much in my answer that you should have moved to	10:30:57	13 A Correct.	10:32:38
23 strike. But no, that's not relevant to me.	10:31:02	14 Q According to the launch schedule in this	10:32:40
24 Q (BY MR. BERRY) Sir, you -- you reference 25 here at the top of the page ending in 561 that	10:31:04	15 Project Rubicon PowerPoint that you relied upon, it	10:32:43
	10:31:05	16 assumed that Uber would launch in two cities in	10:32:47
	Page 58	17 2016, correct?	10:32:49
		18 A It does say it. And I kept saying	10:32:51
		19 Phoenix. I should have said Tucson. Yes.	10:32:54
		20 Q So the analysis that you relied upon, sir,	10:32:57
		21 assumed that Uber would launch in two cities in	10:33:00
		22 2016, correct?	10:33:02
		23 A Correct.	10:33:03
		24 Q Uber hasn't launched in any city in 2017,	10:33:04
		25 has it?	10:33:07
			Page 60

1 there's 15,000 total units projected to be purchased 2 for 2019, right?	10:31:10	1 A As far as I know, they have not.	10:33:09
3 A Yes.	10:31:15	2 Q The assumption --	10:33:09
4 Q And did Uber, in fact, make an order for 5 15,000 total units for 2019?	10:31:16	3 THE COURT REPORTER: Wait.	10:33:09
6 A I -- I don't think they made any order.	10:31:23	4 Q (BY MR. BERRY) -- that Uber would launch	10:33:09
7 This is only 2017. I think it's too early to place 8 that order. So no, I don't think they have done it	10:31:25	5 in two cities in 2016 has now proven false?	10:33:12
9 yet.	10:31:32	6 A Yes.	10:33:19
10 THE COURT REPORTER: Wait.	10:31:32	7 Q Sir, do you see the base case for 2017	10:33:20
11 Q (BY MR. BERRY) In fact, Uber, as far as 12 you know, has never placed an order for any vehicles	10:31:32	8 assumes that Uber would launch in four cities by	10:33:25
13 for its autonomous program?	10:31:34	9 2017, correct?	10:33:30
14 A Well, I think that's an incorrect	10:31:39	10 A Yes.	10:33:31
15 statement, because I understand they have autonomous 16 vehicles that are operational. So obviously, they	10:31:41	11 MR. EISEMAN: Objection as to form.	10:33:31
17 didn't make them from scratch. They bought them	10:31:42	12 Q (BY MR. BERRY) And, sir, we are now in	10:33:34
18 from somebody.	10:31:48	13 2017, and Uber has not launched in any cities,	10:33:36
19 Q How many autonomous vehicles does Uber 20 have?	10:31:49	14 correct?	10:33:39
21 A I don't know that.	10:31:51	15 A As far as I know, they have not.	10:33:40
22 Q Enough to commercialize?	10:31:52	16 Q And so, sir, time has proven the	10:33:41
23 A No, I don't think so.	10:31:54	17 assumption for four cities to be launched in 2017 as	10:33:44
24 Q Has Uber placed any orders for vehicles 25 that would allow it to commercialize?	10:31:55	18 false?	10:33:48
	10:31:59	19 A Correct.	10:33:50
	Page 59	20 Q And, sir, do you see that this launch	10:33:51
		21 schedule for 2018 assumes that Uber will launch in	10:33:54
		22 six cities in -- by 2018, correct?	10:33:59
		23 A Yes. And -- and I actually should take a	10:34:03
		24 little bit of fault with what you have said. Maybe	10:34:05
		25 you're saying it correctly.	10:34:09
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<p>1 But they're not launching in six cities in 10:34:11 2 2018. They're launching in three additional cities 10:34:12 3 beyond what they have already launched in. 10:34:16 4 Q Let me ask re-ask the question and make 10:34:19 5 sure it's clear. Sir, by the end of 2018, the 10:34:21 6 modeling that you relied upon assumed that Uber 10:34:25 7 would launch in six cities, correct? 10:34:29 8 A Yes. 10:34:33 9 Q And as far as you know, sir, does Uber 10:34:34 10 have any current plans to launch in any cities next 10:34:36 11 year? 10:34:40 12 A I have not seen what their plans are for 10:34:40 13 next year, so I don't know. 10:34:43 14 Q If you look below, it has "Detailed Launch 10:34:47 15 Schedule." 10:34:49 16 Do you see that? 10:34:50 17 A Yes. 10:34:51 18 Q And it identifies the names of the cities 10:34:53 19 that they assume that Uber is going to launch in by 10:34:55 20 year, right? 10:34:59 21 A It does. 10:35:00 22 Q And for 2016 base case, sir, it identifies 10:35:01 23 Pittsburgh and Tucson, right? 10:35:06 24 A It does. 10:35:08 25 Q But even though we're now in 2017, Uber 10:35:11 </p>	<p>1 Q And why is that, sir? 10:36:27 2 A Because I had calculated what I would 10:36:28 3 define as an expectancy measure of damages, what was 10:36:29 4 in your client's mind at the time they allegedly 10:36:33 5 took the trade secrets. And so what happens after 10:36:36 6 that is -- is not that relevant to me 10:36:39 7 Q Okay. So you -- I want to make sure I get 10:36:42 8 this right. You were looking at what was in Uber's 10:36:44 9 mind in January of 2016, correct? 10:36:47 10 A Correct 10:36:49 11 Q And you have ignored intervening events, 10:36:50 12 to the extent there are any, between January of 2016 10:36:53 13 and today? 10:36:56 14 MR EISEMAN: Objection as -- 10:36:57 15 A I -- 10:36:57 16 MR EISEMAN: -- to form 10:36:57 17 A -- I wouldn't say I have ignored them, 10:36:58 18 but -- but they are not -- they're not important to 10:37:00 19 change my opinion 10:37:03 20 Q (BY MR BERRY) And, sir, to the extent 10:37:04 21 that some of the assumptions underlying Ms Qi's 10:37:06 22 analysis have proven false, that does not impact 10:37:09 23 your analysis? 10:37:14 24 MR EISEMAN: Objection as to form 10:37:15 25 A No, it does not 10:37:17</p>
<p>Page 62</p> <p>1 has not launched in either city? 10:35:14 2 A As far as I know, they have not. 10:35:16 3 Q And for 2017, sir, in addition to 10:35:17 4 Pittsburgh and Tucson, it also identifies "Singapore 10:35:22 5 and Dallas." 10:35:24 6 Do you see that? 10:35:26 7 A Yes. 10:35:26 8 Q And Uber has not launched in Singapore or 10:35:26 9 Dallas, has it? 10:35:30 10 A As far as I know, they have not. 10:35:31 11 Q When will Uber launch in Singapore? 10:35:33 12 A I don't know what their current plans are. 10:35:36 13 It's not been produced in the case. 10:35:38 14 Q Sir, the fact that the assumptions -- let 10:35:51 15 me back up and ask a different question. 10:35:55 16 This launch schedule from this Project 10:35:57 17 Rubicon PowerPoint is some of the information that 10:36:00 18 Ms. Qi relied upon in coming up with the value of 10:36:03 19 accelerated development, correct? 10:36:08 20 A It is. I don't think she relied on this 10:36:10 21 document, but a similar document, yes. 10:36:12 22 Q The fact that we are now sitting in 2017 10:36:14 23 and some of these assumptions we know are false, how 10:36:18 24 did that impact your analysis? 10:36:21 25 A It doesn't impact it at all. 10:36:23</p>	<p>Page 64</p> <p>1 Q (BY MR. BERRY) Sir, if you were to conduct 10:37:18 2 an analysis today of expected profits through 2022 10:37:25 3 for Uber, they would be significantly lower than 10:37:34 4 what Ms. Qi projected in 2016, correct? 10:37:37 5 MR. EISEMAN: Objection as to form. 10:37:40 6 A Not necessarily. It's an incomplete 10:37:42 7 hypothetical. Clearly they're entering later. But 10:37:44 8 they could accelerate their -- their launches of 10:37:47 9 cities in the future and either catch up or maybe 10:37:50 10 even exceed if, again, they launch more than the 10:37:53 11 cities that were in the base case during the time 10:37:56 12 horizon of the projection. 10:37:59 13 Q (BY MR. BERRY) And -- 10:38:01 14 A So you have given me not enough 10:38:01 15 information to answer the question. 10:38:03 16 Q Is that -- let me back up and ask you: Is 10:38:04 17 that something that you looked at in this case? Did 10:38:05 18 you look at Uber's current plans and current 10:38:08 19 forecasts and modeling in an attempt to try to 10:38:11 20 project revenues through 2022? 10:38:13 21 A No. Because I -- I asked if that 10:38:17 22 information was available, and I was told it was not 10:38:18 23 produced. So if you want to produce it and have me 10:38:21 24 consider it, I'm happy to do so. But it's not 10:38:23 25 available for me to consider. 10:38:27</p>

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1 Q And what information was not available? 10:38:28	1 development work assumes that Uber is going to 10:40:53
2 A Their -- their current projections and 10:38:30	2 launch in 2016, the fact that's not happened is 10:40:56
3 forecasts for both launching and profits going into 10:38:32	3 something under the Book of Wisdom that you would 10:41:00
4 the future. 10:38:35	4 look at, correct? 10:41:03
5 THE COURT REPORTER: I just need you to 10:38:42	5 MR EISEMAN: Objection as to form 10:41:04
6 both slow down, please. 10:38:43	6 A Yes 10:41:05
7 Q (BY MR. BERRY) But, sir, Uber's current 10:38:46	7 Q (BY MR BERRY) How did that impact your 10:41:05
8 projection and forecasts was not necessary for you 10:38:48	8 reasonable royalty analysis, the fact that the 10:41:07
9 to have for the opinions that you reached in this 10:38:52	9 numbers you used assumed that Uber would launch in 10:41:10
10 case? 10:38:53	10 2016 and 2017, and that hasn't happened? 10:41:13
11 A It -- based on my statement to you earlier 10:38:54	11 MR EISEMAN: Objection as to form 10:41:17
12 that -- what I think I have done as an expectancy 10:38:57	12 A I -- I have no information to adjust for 10:41:17
13 measure of damages, it's not relevant. 10:39:00	13 that, so it has not impacted my opinion 10:41:20
14 Q Sir, what's the Book of Wisdom? 10:39:07	14 Q (BY MR BERRY) So, sir, it's something 10:41:23
15 A Well, it's a U.S. Supreme Court decision 10:39:10	15 that you agree you should look at, but you have not 10:41:25
16 in Sinclair versus Jenkins Refinery, I think, back 10:39:14	16 made any adjustments for that? 10:41:28
17 in 1933 or something by Justice Cardozo where the 10:39:19	17 MR EISEMAN: Objection as to form 10:41:29
18 case law in the patent area makes what I 10:39:26	18 A I think that's fair 10:41:31
19 professionally think is a bad decision; that the 10:39:28	19 MR EISEMAN: Mr Berry, when we have a 10:41:39
20 hypothetical negotiation occurs at or before the 10:39:31	20 chance to take a break, it might be good for the 10:41:41
21 date of first infringement. 10:39:34	21 court reporter 10:41:44
22 But the patent statute says that you are 10:39:37	22 MR BERRY: Okay Absolutely Let's take 10:41:44
23 to compensate the patent owner for use of the 10:39:39	23 a break 10:41:46
24 invention. By definition, there is no use of the 10:39:43	24 MR EISEMAN: All right It is 10:41 a m 10:41:46
25 invention before infringement occurs, so you have to 10:39:48	25 We are going off the record 10:41:49
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1 look at facts that don't exist until after the date 10:39:50	1 (A break was taken from 10:41 a m to 10:41:50
2 of the hypothetical negotiation to inform your 10:39:54	2 10:57 a m) 10:41:53
3 opinion as to what should be paid. 10:39:57	3 THE VIDEOGRAPHER: We are back on the 10:57:50
4 Q So you essentially look at events that 10:39:59	4 record It's 10:57 a m 10:57:50
5 happened after the hypothetical negotiation to 10:40:02	5 Q (BY MR BERRY) Sir, I want to continue now 10:57:52
6 inform what the parties have agreed upon for the 10:40:05	6 and talk about -- more about the value of 10:57:54
7 reasonable royalty? 10:40:10	7 accelerated development and the Ms Qi slide As -- 10:57:57
8 A Right. Because that is an outcome 10:40:11	8 as far as you know as of today, no company in the 10:58:03
9 approach to calculating damages, what has actually 10:40:13	9 world has earned a profit from using autonomous 10:58:06
10 happened. 10:40:17	10 vehicles to transport passengers, right? 10:58:10
11 Q And we're going to get it -- into it in 10:40:17	11 A Correct 10:58:14
12 more detail later, sir, but your reasonable royalty 10:40:19	12 Q In fact, no company in the world, as far 10:58:15
13 analysis relies upon your accelerated development 10:40:23	13 as you're aware today, has ever made a dollar of 10:58:16
14 model, correct? 10:40:25	14 revenue transporting passengers in an autonomous 10:58:18
15 A It does. 10:40:26	15 vehicle? 10:58:22
16 Q And did you follow the Book of Wisdom and 10:40:27	16 A Correct 10:58:22
17 look at current events to help shape what the 10:40:30	17 Q Did you make any adjustments to the Ms Qi 10:58:28
18 reasonable royalty should be in this case? 10:40:32	18 numbers before relying on them? 10:58:31
19 A I -- I -- I didn't memorize that fact. 10:40:36	19 A No 10:58:33
20 But if there were facts that were relevant and I 10:40:37	20 Q Let me show you a copy of that 10:58:34
21 have said in my report that occurred after the 10:40:40	21 presentation Sir, I have handed you what has been 10:58:35
22 hypothetical negotiation, the answer is yes. I 10:40:44	22 marked as Exhibit 299 10:58:48
23 think the answer is yes. 10:40:46	23 Do you recognize this as a copy of the 10:58:53
24 Q So the facts that we have just been 10:40:47	24 Ms Qi presentation that you relied upon? 10:58:55
25 looking at here, the fact that your accelerated 10:40:49	25 A Yes It's behind Tab 7 of Volume 5 of my 10:58:57
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1 report.	10:59:00	1 the analysis. It's just not her going on her	11:00:59
2 Q And this is a -- a four-slide	10:59:04	2 computer at night by herself making some guesses.	11:01:01
3 presentation -- PowerPoint presentation, right?	10:59:07	3 This was done by the people that do the Project	11:01:04
4 A It was, as produced to us.	10:59:10	4 Rubicon modeling.	11:01:07
5 Q And you read Ms. Qi's depo -- deposition	10:59:16	5 Q This slide was?	11:01:08
6 testimony in this case, right?	10:59:19	6 A I don't know if this -- no. I -- I don't	11:01:10
7 A You have assumed a fact in evidence, yes.	10:59:20	7 know who made the slide. But that the analysis that	11:01:10
8 Q And she testified that this slide -- and	10:59:22	8 arrived at these numbers was done by a team of	11:01:14
9 looking at Slide No. 4 -- let me back up.	10:59:27	9 people --	11:01:17
10 Slide No. 4 is the one that you rely upon	10:59:32	10 Q What --	11:01:18
11 for the value of accelerated development, right?	10:59:36	11 A -- is my understanding.	11:01:18
12 A I do.	10:59:39	12 Q -- and what do you base that on?	11:01:20
13 Q And did you see Ms. Qi's testimony saying	10:59:40	13 A I think her testimony.	11:01:21
14 that Uber never relied upon this slide?	10:59:42	14 Q And you said that the length of time that	11:01:22
15 A I --	10:59:45	15 Ms. Qi had been at Uber could be relevant to your	11:01:24
16 MR. EISEMAN: Objection as to form.	10:59:45	16 analysis. How?	11:01:29
17 A -- yeah, I'm not sure if that's what she	10:59:46	17 A Well, again, the more knowledgeable you	11:01:29
18 said, but I do -- I did read her testimony on this	10:59:48	18 are about this industry, the -- everything else	11:01:31
19 subject.	10:59:51	19 being equal, the better you are -- would be able to	11:01:35
20 Q (BY MR. BERRY) And did you read Ms. Qi's	10:59:51	20 predict white -- what might happen to the industry.	11:01:38
21 testimony saying that this slide was never used by	10:59:52	21 Q And, sir, what level of knowledge did	11:01:42
22 Uber?	10:59:56	22 Ms. Qi have about the autonomous vehicle industry?	11:01:44
23 MR. EISEMAN: Objection as to form.	10:59:56	23 MR. EISEMAN: Objection as to form.	11:01:47
24 A I -- I at least read something that	11:00:00	24 A I -- I -- I read her deposition. I don't	11:01:49
25 sounded like that.	11:00:02	25 think that question was asked, so I don't have any	11:01:51
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1 Q (BY MR. BERRY) And the fact that -- if	11:00:04	1 information on that subject.	11:01:53
2 true, the fact that Uber never used this slide, how	11:00:05	2 Q (BY MR. BERRY) You just don't know?	11:01:54
3 does that impact your analysis?	11:00:10	3 A I don't know.	11:01:56
4 MR. EISEMAN: Objection as to form.	11:00:12	4 Q And in this slide that we're looking at on	11:01:57
5 A Well, it doesn't, because I don't know how	11:00:13	5 Exhibit 299, Ms. Qi does not provide the formula	11:02:06
6 they would use it. The -- the -- people were just	11:00:14	6 that she used to calculate the value of accelerated	11:02:09
7 being asked -- you know, she was just asked, you	11:00:19	7 development, right?	11:02:13
8 know: What is the effect of a one- to two-year	11:00:20	8 A She does not.	11:02:14
9 acceleration in our development schedule?	11:00:22	9 Q And for the opinions you offered in this	11:02:16
10 Financially what impact that would be on	11:00:27	10 case, sir, you are still comfortable relying on	11:02:17
11 us. I don't know what use you would make of that	11:00:29	11 Slide 4, despite not knowing the formula, right?	11:02:22
12 after that information was communicated to the	11:00:31	12 A Yes.	11:02:25
13 executives at Uber --	11:00:34	13 Q And, sir, you were still comfortable	11:02:25
14 Q (BY MR. BERRY) So --	11:00:35	14 relying on Slide 4, even though you could not test	11:02:28
15 A -- so that doesn't surprise me that it	11:00:35	15 the formula, right?	11:02:30
16 wasn't used.	11:00:38	16 A Yes.	11:02:31
17 Q How long had Ms. Qi been at Uber when she	11:00:39	17 Q If Ms. Qi testified in her deposition that	11:02:39
18 prepared this slide?	11:00:42	18 this slide was never used by Uber, you have no	11:02:41
19 A I -- I don't have her employment history	11:00:43	19 reason to dispute that, right?	11:02:45
20 to know that.	11:00:45	20 MR. EISEMAN: Objection as to form.	11:02:46
21 Q Is it relevant to the analysis you did?	11:00:46	21 A I -- I do not. I would expect that she	11:02:47
22 A I think there's some relevance. But	11:00:50	22 was telling the truth at her deposition, at least	11:02:49
23 again, you -- you say she did the analysis. This	11:00:52	23 based on her state of mind.	11:02:52
24 was done with a team of people.	11:00:55	24 Q (BY MR. BERRY) Was this slide concerning	11:02:55
25 She presented it. She was in charge of	11:00:57	25 the value of -- of any accelerated development	11:02:58
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1 presented to the Uber board at any time?	11:03:02	1 vehicles with no safety driver in these 13 cities?	11:05:11
2 A I -- I have no information one way or	11:03:05	2 MR. EISEMAN: Objection as to form	11:05:15
3 the other. I don't believe it was. It may or may	11:03:07	3 A Well, the question -- right question for	11:05:16
4 not have been, but I didn't assume that it was.	11:03:10	4 me to consider and you to ask is: Is it legal	11:05:17
5 Q We can look at Exhibit 299 and Slide 4 and	11:03:19	5 in 2022?	11:05:21
6 see what some of the assumptions, right?	11:03:22	6 None of us knows That is some	11:05:23
7 A Yes, we can.	11:03:25	7 uncertainty	11:05:24
8 Q And one of the assumptions that we know is	11:03:25	8 Q (BY MR. BERRY) You just don't know one way	11:05:24
9 that Ms. Qi used a 15 percent discount rate for the	11:03:27	9 or the other, right?	11:05:27
10 present value calculations, right?	11:03:30	10 A I -- I don't know No one can answer that	11:05:28
11 A We do.	11:03:35	11 question right now Now, based on, again,	11:05:30
12 Q Sir, you did not evaluate the	11:03:35	12 subsequent, it appears it's more likely that that	11:05:33
13 reasonableness of using a 15 percent discount rate	11:03:37	13 will occur than when this projection was done, which	11:05:36
14 before arriving at your opinions in this case?	11:03:41	14 would mean that risk is lower and this rate should	11:05:40
15 MR. EISEMAN: Objection as to form.	11:03:43	15 be lower than 15 percent But I haven't made any	11:05:43
16 A I don't know what you mean by "evaluate."	11:03:43	16 such adjustment	11:05:46
17 I saw this. And based on my understanding of Uber	11:03:45	17 MR. BERRY: Move to strike as	11:05:48
18 being the leader in the transportation-as-a-service	11:03:49	18 nonresponsive	11:05:48
19 business, that that number seemed appropriate to me	11:03:52	19 Q (BY MR. BERRY) Did you do any work at all,	11:05:51
20 based on my understanding of their risk compared to	11:03:57	20 sir, to look at the regulatory environment of	11:05:52
21 others that were entering the market.	11:04:01	21 launching an autonomous vehicle before arriving at	11:05:58
22 Q (BY MR. BERRY) Sir, your Opening Report	11:04:02	22 your opinions in this case?	11:06:00
23 does not discuss the reasonableness of using a	11:04:05	23 A I have looked at some facts that are	11:06:05
24 15 percent discount rate, correct?	11:04:07	24 relevant to that, yes	11:06:09
25 A That is correct.	11:04:10	25 Q And did you discuss any analysis in your	11:06:11

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1 Q Sir, when selecting a discount rate to	11:04:14	1 Opening Report concerning the regulatory environment	11:06:13
2 use, you should look at the riskiness of the	11:04:17	2 and whether it's legal or illegal to launch an	11:06:16
3 proposed project, right?	11:04:20	3 autonomous vehicle program in certain cities?	11:06:19
4 A I agree --	11:04:21	4 A No	11:06:22
5 MR. EISEMAN: Objection as to form.	11:04:22	5 Q Another assumption underlying this model	11:06:33
6 A -- I agree with that.	11:04:22	6 and the fact that by 2022, that they're going to	11:06:40
7 Q (BY MR. BERRY) The riskier it is, the	11:04:24	7 have launched in 13 cities, is the timing of those	11:06:43
8 higher the discount rate?	11:04:26	8 launches, right?	11:06:47
9 A Everything else being equal, yes.	11:04:28	9 A That would be relevant, yes	11:06:48
10 Q You can see here on Ms. Qi's slide that	11:04:36	10 Q And that's not something that you	11:06:51
11 for the baseline city coverage -- and that's the one	11:04:38	11 considered the reasonableness of, right?	11:06:52
12 you used, right, sir? You -- you used the baseline?	11:04:41	12 A No I, again, assumed that Ms. Qi and her	11:06:54
13 A I did.	11:04:44	13 staff, who were conversant with the Rubicon modeling	11:06:58
14 Q And for the baseline, it assumed 13 cities	11:04:45	14 and the assumptions used, were properly using that	11:07:04
15 by 2022, right?	11:04:49	15 information	11:07:07
16 A It did.	11:04:51	16 Q But you just don't know one way or the	11:07:12
17 Q And, sir, you did not identify those 13	11:04:51	17 other?	11:07:14
18 cities in your Opening Report, right?	11:04:55	18 A I -- I don't know, no That -- none of	11:07:15
19 A I did not.	11:04:57	19 that information has -- has been produced to me	11:07:17
20 Q And you did not test the reasonableness of	11:04:57	20 Q And even though that information that you	11:07:19
21 assuming that Uber is going to launch in 13 cities	11:04:59	21 didn't have, you were still comfortable arriving at	11:07:23
22 by 2022, correct?	11:05:02	22 the opinions that you made in this case, right?	11:07:25
23 A No. And I have no ability to do that.	11:05:05	23 A I did And I'm very comfortable with	11:07:27
24 Q And, sir, you don't -- you didn't look to	11:05:07	24 doing that	11:07:29
25 see whether it's even legal to have autonomous	11:05:09	25 Q Another factor that goes into this present	11:07:36

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<p>1 value calculation on Slide 4 is the pricing of 11:07:40 2 future trips, right? 11:07:43 3 A I would agree with that. 11:07:44 4 Q And did you look and test the assumptions 11:07:45 5 underlying -- underlying the pricing of these trips? 11:07:49 6 A Well, to answer your compound question, 11:07:54 7 yes and no. 11:07:56 8 Q And what did you do to test? 11:07:57 9 A Then you didn't listen to my answer -- or 11:07:59 10 your question -- your second question, Did you look 11:08:01 11 at or test? 11:08:03 12 I didn't test. I -- I was aware and I 11:08:04 13 think I have seen in some Rubicon documents, 11:08:06 14 information about pricing. But I -- I didn't test 11:08:08 15 those assumptions. I assumed that your client knew 11:08:12 16 what they believed was the prices they would charge. 11:08:16 17 Q So, sir, in some of the Rubicon 11:08:19 18 presentations that you saw, it disclosed future 11:08:21 19 pricing -- 11:08:25 20 A Yes -- 11:08:26 21 Q -- correct? 11:08:26 22 A -- that's my recollection. 11:08:27 23 Q But you didn't test those assumptions? 11:08:29 24 A That is correct. 11:08:32 25 Q And, sir, for your unjust enrichment 11:08:32</p>	<p>1 proven false. Your analysis would still rely on the 11:10:02 2 January 2016 slide, even though we now know it's 11:10:09 3 false under this hypothetical? 11:10:12 4 MR. EISEMAN: Objection as to form. 11:10:14 5 A Yes. And I have no facts to know what 11:10:15 6 you're suggesting. But the facts could go either 11:10:17 7 way or both ways. 11:10:19 8 I need to know what the impact would be, 11:10:21 9 even if that makes it relevant, what you would want 11:10:23 10 me to do. 11:10:25 11 Q (BY MR. BERRY) So that -- we have been 11:10:31 12 talking about the first variable, the value of 11:10:32 13 accelerated development. Let's move on now and talk 11:10:37 14 about the second variable, the length of 11:10:39 15 acceleration. 11:10:42 16 Now, for this accelerated development 11:10:48 17 opinion, you're looking at future profits, right? 11:10:51 18 A Future expected profits, yes. 11:10:55 19 Q So what you're looking at is the 11:10:58 20 commercialization of this autonomous vehicle 11:11:02 21 technology, right? 11:11:05 22 A Yes. 11:11:06 23 Q The length of acceleration that you relied 11:11:12 24 upon is the length of development, not 11:11:16 25 commercialization, right? 11:11:19</p>
<p style="text-align: right;">Page 78</p> <p>1 opinion, it's your opinion that you should not look 11:08:57 2 at events postdating the creation of this slide; is 11:08:59 3 that fair? 11:09:03 4 MR. EISEMAN: Objection as to form. 11:09:03 5 A I think that's fair for the -- the type of 11:09:05 6 damages that I have calculated. 11:09:06 7 Q (BY MR. BERRY) And what do you mean by 11:09:07 8 "the type of damages"? 11:09:08 9 A Again, they -- I have calculated what's 11:09:10 10 called expectancy damages, what -- what was the 11:09:12 11 alleged wrongdoer forecasting or believing at the 11:09:16 12 time that they did what they are accused of doing 11:09:20 13 Q So, sir, for an unjust enrichment major of 11:09:25 14 damages, it's your understanding that you should not 11:09:29 15 look at later events in calculating that number? 11:09:32 16 MR. EISEMAN: Objection as to form. 11:09:36 17 A For a theft of trade secret case, yes 11:09:37 18 Q (BY MR. BERRY) And what is that based on, 11:09:40 19 sir? 11:09:42 20 A Again, it's my experience I'm not citing 11:09:42 21 you a case for that proposition. You know, I have 11:09:44 22 written on the subject, and that's just my 11:09:49 23 experience. 11:09:52 24 Q Assume, sir, that every assumption that 11:09:53 25 this January 2016 modeling was based on is now 11:09:58</p>	<p>1 A Well, yeah. But there's no 11:11:20 2 commercialization until there's development. So to 11:11:22 3 the extent you accelerate development, you 11:11:24 4 commercialize that much earlier. 11:11:27 5 Q That's not necessarily true, though, is 11:11:29 6 it? 11:11:31 7 A Well, I think it is -- 11:11:31 8 MR. EISEMAN: Objection as to form. 11:11:32 9 A -- absolutely true. 11:11:33 10 Q (BY MR. BERRY) That for each component 11:11:34 11 part that you accelerate the -- the development of, 11:11:36 12 it's your opinion that would also accelerate the 11:11:38 13 commercialization of it? 11:11:42 14 A No. That was not your question or my 11:11:43 15 answer. No. And I know this is a point of 11:11:45 16 disagreement between your technical expert and Mr. 11:11:47 17 Hesselink -- or Dr. Hesselink and also your damage 11:11:49 18 experts and me that -- and -- and I cited the 11:11:52 19 information in my report. 11:11:56 20 But -- and your client believes that 11:11:58 21 these -- this development was on the critical path 11:12:00 22 of their development. And -- and I was, before my 11:12:05 23 40-year career in this industry, a cost and 11:12:07 24 scheduling engineer. I fully understand the 11:12:10 25 implication of being on the critical path. 11:12:12</p>

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1 And if -- if what I have been told is 2 correct, which is the belief of your client and 3 Dr. Hesselink, then the -- the way I have applied 4 the facts of this case is entirely appropriate.	11:12:14 11:12:18 11:12:21 11:12:23	1 Q And some of these other systems include 2 cameras?	11:14:29 11:14:31
5 Q Sir, in your Opening Report did you 6 discuss at all how these nine trade secrets would 7 advance the commercial -- the commercialization of 8 Uber's technology?	11:12:28 11:12:31 11:12:35 11:12:38	3 A Yes. 4 Q Radar? 5 A Yes. 6 Q Sonar?	11:14:32 11:14:32 11:14:33 11:14:35
9 A I -- I think -- I don't know if I discuss 10 it. It's clearly implied by the way I use the 11 information in my report.	11:12:39 11:12:41 11:12:44	7 A I don't think in your client's product -- 8 or my client's product, but I think some people have 9 suggested using sonar.	11:14:36 11:14:38 11:14:41
12 Q But you don't discuss it, do you?	11:12:46	10 Q Software?	11:14:43
13 A I -- I -- I didn't think it was necessary. 14 But no, so I did not.	11:12:47 11:12:49	11 A Clearly. 12 Q And the vehicle itself?	11:14:44 11:14:45
15 Q And you would agree, sir, that advanced 16 development alone is not going to get you profits --	11:12:51 11:12:53	13 A Certainly. 14 Q Your -- your report, sir, does not discuss	11:14:48 11:14:52
17 MR. EISEMAN: Objection -- 18 Q -- in the commercial?	11:12:57 11:12:57	15 how a trade secret related to LiDAR could advance 16 development of these other systems, does it?	11:14:55 11:15:00
19 MR. EISEMAN: -- objection as to form.	11:12:59	17 A No. I think that many of those other	11:15:03
20 A I agree with that.	11:13:00	18 systems -- not all, but some -- are dependent upon	11:15:05
21 Q (BY MR. BERRY) For example, advanced 22 development alone will not necessarily advance	11:13:06 11:13:07	19 the finalization of your LiDAR development. But	11:15:10
23 regulatory hurdles?	11:13:11	20 that's really a technical question. I'm not giving	11:15:13
24 MR. EISEMAN: Objection as to form.	11:13:16	21 an independent opinion. I think Dr. Hesselink will	11:15:16
25 A No, I don't -- I think there is some	11:13:16	22 do that. And I'm relying upon his judgment.	11:15:19
Page 82		23 Q So looking only now, sir, at the work that	11:15:23
		24 you did -- that you personally did, you're not	11:15:25
		25 saying that advancing LiDAR is going to have an	11:15:28
		Page 84	
1 relationship, but there's also some independence of 2 those variables.	11:13:18 11:13:21	1 effect on the development of cameras --	11:15:32
3 Q (BY MR. BERRY) And likewise, advanced 4 development alone is not necessarily going to affect 5 consumer demand and adoption issues?	11:13:21 11:13:25 11:13:29	2 MR EISEMAN: Objection --	11:15:35
6 MR. EISEMAN: Objection as to form.	11:13:32	3 Q (BY MR BERRY) -- at Uber, right?	11:15:35
7 A Well, I think it will. I -- if you -- the 8 question is will it change consumer demand. I --	11:13:35 11:13:38	4 MR EISEMAN: -- objection as to form	11:15:37
9 I -- I think the consumer demand will be what it is 10 when this service is introduced. And I think then 11 the growth in demand over time will be accelerated	11:13:47 11:13:50 11:13:53	5 A No, I have not	11:15:37
12 permanently if you get to the market earlier.	11:13:58	6 Q (BY MR BERRY) Let's take a -- a concrete	11:15:39
13 Q (BY MR. BERRY) Sir, each of the nine trade 14 secrets at issue in this case is directed at LiDAR	11:14:04 11:14:06	7 example here Trade Secret 13, do you remember what	11:15:44
15 technology, right?	11:14:10	8 13 is? It's the [REDACTED]	11:15:47
16 A It is.	11:14:10	9 A I do	11:15:50
17 Q And LiDAR, obviously, also includes other 18 technology that is not encompassed by the nine trade	11:14:11 11:14:14	10 Q You're not saying, sir, that Trade	11:15:51
19 secrets, right?	11:14:17	11 Secret 13 related to [REDACTED] is going to	11:15:53
20 A I agree with that.	11:14:18	12 advance development of cameras, right?	11:15:57
21 Q A lot of other technology?	11:14:19	13 A I am not	11:16:00
22 A I agree with that.	11:14:20	14 Q And you're not saying that the Trade	11:16:00
23 Q And LiDAR is only one of many systems in	11:14:22	15 Secret 13 relating to [REDACTED] is going to	11:16:01
24 an autonomous vehicle?	11:14:26	16 advance software?	11:16:05
25 A That's true.	11:14:28	17 A Oh, it might Yes, it -- that, I think --	11:16:06
Page 83		18 even though -- again, you can Daubert me if you want	11:16:08
		19 on this	11:16:12
		20 But based on my understanding, it would	11:16:13
		21 And I am an engineer, not in this space. But I	11:16:15
		22 understand -- believe that Dr. Hesselink will	11:16:18
		23 testify that there is a relation; that until you	11:16:19
		24 solidify these hardware designs, that -- that a lot	11:16:23
		25 of software can't be completed	11:16:27
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1 Q Sir, are you saying that it's your opinion 11:16:29	1 A -- it is. 11:30:02
2 in this case that until Trade Secret 13 on the 11:16:31	2 Q (BY MR. BERRY) Okay. And the Trade 11:30:03
3 [REDACTED], that Uber can not be working on 11:16:34	3 Secret 25 encompasses a number of [REDACTED] 11:30:04
4 software? 11:16:38	4 right? 11:30:07
5 A Oh, absolutely not. And again, that's not 11:16:38	5 A It does. 11:30:08
6 the question you just asked. 11:16:40	6 Q Do you know how many? 11:30:09
7 And again, what I'm telling you now -- 11:16:41	7 [REDACTED] 11:30:12
8 we're kind of wasting time. I'm not the technical 11:16:43	9 Q Okay. And Waymo has alleged that Uber 11:30:14
9 expert. I'm not going to be saying this at trial. 11:16:46	10 [REDACTED] 11:30:17
10 These are questions for Dr. Hesselink. 11:16:49	11 right? 11:30:20
11 THE COURT REPORTER: Wait. 11:16:51	12 A I'm not aware of that. 11:30:22
12 Q (BY MR. BERRY) Let's put it this way: The 11:16:52	13 Q And if it is, in fact, true that Waymo is 11:30:23
13 team working on [REDACTED] is different from 11:16:55	14 alleging that Uber misappropriated only some of the 11:30:28
14 the team working on software, as far as you know? 11:16:57	15 [REDACTED], it would be improper to use the 11:30:31
16 A Again, I don't know that, but that would 11:17:00	16 entire two years for Trade Secret 25, right? 11:30:35
17 be my expectation. 11:17:03	17 MR. EISEMAN: Objection as to form. 11:30:38
18 Q And certainly, sir, any advancement in 11:17:08	18 A I -- it's an incomplete hypothetical. I 11:30:38
19 [REDACTED] is not necessarily going to impact 11:17:12	19 would need more facts to know. But even if I had 11:30:41
20 the regulatory environment? 11:17:15	20 those facts, that's a question for Dr. Hesselink. 11:30:45
21 MR. EISEMAN: Objection as to form. 11:17:18	21 That's a technical question. 11:30:46
22 A Probably not. 11:17:19	22 Q (BY MR. BERRY) For purposes of your 11:30:48
23 MR. BERRY: I need to take a quick break 11:17:20	23 damages analysis, sir, you would want to know how 11:30:49
24 THE VIDEOGRAPHER: Oh, okay. This is the 11:17:27	24 long it would take Uber to design the particular 11:30:52
25 end of Disk 1 in Volume I in the deposition of 11:17:29	25 [REDACTED] that were misappropriated, correct? 11:30:56
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1 Mr Wagner It's 11:17 a m 11:17:33	1 A I think that's relevant, yes. 11:30:59
2 (A break was taken from 11:17 a m to 11:17:36	2 Q And it's fewer than all the [REDACTED] 11:31:01
3 11:29a m) 11:17:40	3 in Trade Secret 25, you would want to know that? 11:31:04
4 THE VIDEOGRAPHER: We are back on the 11:29:11	4 MR. EISEMAN: Objection as to form. 11:31:07
5 record This is the beginning of Disc 2 in Volume I 11:29:11	5 A No. That's not -- not a fact in evidence. 11:31:08
6 in the deposition of Mr Wagner It's 11:29 a m 11:29:18	6 I think I would need to ask Dr. Hesselink if that 11:31:11
7 Q (BY MR BERRY) Sir, we were discussing the 11:29:22	7 affects his opinion. 11:31:13
8 second variable in the accelerated development, the 11:29:24	8 And if it does and he says, Based on the 11:31:14
9 length of time 11:29:28	9 information I have now and a more limited subset of 11:31:18
10 A We were 11:29:29	10 [REDACTED]. I think they could do it in a year, 11:31:22
11 Q And I want to now focus on Trade 11:29:30	11 I would change my calculation. 11:31:25
12 Secret 25 Do you recall that's the [REDACTED] 11:29:32	12 Q (BY MR. BERRY) Let's put it this way, sir: 11:31:27
13 A I do 11:29:35	13 In your Opening Report, you did not apportion Trade 11:31:29
14 Q And you relied on Dr Hesselink to give 11:29:35	14 Secret 25 based on the [REDACTED] 11:31:35
15 you the time it would take Waymo to independently 11:29:40	16 MR. EISEMAN: Objection as to form. 11:31:37
16 develop Trade Secret 25? 11:29:45	17 A No. And even -- even -- I -- I think I do 11:31:37
17 A Yes 11:29:46	18 know what you're talking about. That -- I believe 11:31:39
18 MR. EISEMAN: Objection as to form 11:29:46	19 Waymo has only found evidence of [REDACTED] 11:31:47
19 Q (BY MR BERRY) It was the time it did take 11:29:47	[REDACTED] something like that. 11:31:47
20 Waymo, right? 11:29:48	21 But that doesn't mean that your client 11:31:50
21 A Oh, I'm -- I'm not exactly sure what -- 11:29:49	22 isn't using them. That they -- my client just 11:31:52
22 the basis of his two years It was either what it 11:29:53	23 hasn't found it yet. And -- but even if that is 11:31:55
23 took Waymo or what he believes it will take Uber 1 11:29:56	24 true, it may be that these [REDACTED] 11:32:02
24 don't know which one it was -- 11:29:59	[REDACTED] and it would still take two years. 11:32:02
25 Q Okay 11:30:02	Page 89

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1 But that's a question for Dr. Hesselink, not for 2 Mike Wagner. 3 Q (BY MR. BERRY) You just don't know, sir, 4 do you? 5 A I -- I don't. And if I did, you -- you 6 should appropriately Daubert me, if I did. 7 Q And you spoke with Dr. Hesselink, right? 8 A No, I have never spoken with him. Have 9 you seen any evidence that I said I had a 10 conversation with him? No. I have reviewed his 11 report. Or actually, just parts of his report. 12 Q Did you -- 13 THE COURT REPORTER: Wait. 14 Q (BY MR. BERRY) Did you ever want to speak 15 with Dr. Hesselink? 16 A I never saw any need, because the 17 information that I needed to rely upon him was in a 18 written report. 19 And that's what I tell every lawyer who I 20 hire -- I am retained by, when I have to rely on a 21 technical expert, I said, What I need to rely on, I 22 want it in a written report so the other side has a 23 chance to -- 24 THE COURT REPORTER: I need -- 25 A -- test it.	11:32:04 11:32:06 11:32:08 11:32:09 11:32:10 11:32:12 11:32:14 11:32:16 11:32:18 11:32:20 11:32:22 11:32:24 11:32:25 11:32:26 11:32:27 11:32:29 11:32:33 11:32:34 11:32:37 11:32:41 11:32:41 11:32:53 11:32:53 11:32:53 Page 90	1 what's been marked as Exhibit 2274. And do you 2 recognize these as Uber's responses to 3 interrogatories? 4 A I do. 5 Q And, sir, you relied on this document? 6 A Yes. 7 Q If you could please turn to page 4. This 8 is the -- the interrogatory response that you relied 9 upon to get the time to independently develop all of 10 the trade secrets except for 25 and 111 -- 11 MR. EISEMAN: Objection as to form. 12 Q (BY MR. BERRY) -- and 90? 13 A Yes. You said that well. 14 Q In the middle -- 15 MR. EISEMAN: I'll withdraw my objection. 16 And I apologize for interrupting you in the middle 17 of your question. 18 Q (BY MR. BERRY) In the middle of page 4, 19 Uber writes in this interrogatory response -- it 20 says, The scheduled times identified for the 21 redesigns below would not significantly or 22 materially impact the timeline for commercialization 23 and rollout of Uber's fully anonymous self-driving 24 technology to the general public. 25 Do you see that?	11:33:57 11:34:01 11:34:05 11:34:06 11:34:06 11:34:09 11:34:10 11:34:18 11:34:22 11:34:27 11:34:32 11:34:34 11:34:35 11:34:38 11:34:40 11:34:41 11:34:44 11:34:44 11:34:46 11:34:50 11:34:52 11:34:56 11:34:58 11:35:03 11:35:05 Page 92
1 THE COURT REPORTER: -- you to slow down, 2 please 3 A I'm sorry I -- I want every opinion that 4 I'm relying upon to be in a report so the other side 5 has fair notice of it; they have a chance to depose 6 the expert on it, rather than some private 7 conversation that I have with the technical expert 8 And my client accommodated that request in this 9 case 10 Q (BY MR. BERRY) Sitting here right now, 11 sir, you don't know how long it would take -- or 12 that it took Waymo to develop the [REDACTED] 13 at issue, correct? 14 A I -- 15 MR. EISEMAN: Objection -- 16 A -- don't 17 MR. EISEMAN: -- as to form 18 A Sorry 19 Q (BY MR. BERRY) What was your response, 20 sir? 21 A I don't 22 (Exhibit 2274 was marked for 23 identification and is attached to the transcript) 24 A Thank you 25 Q (BY MR. BERRY) Sir, I have handed you	11:32:53 11:32:53 11:32:53 11:32:53 11:32:53 11:32:56 11:33:00 11:33:01 11:33:04 11:33:07 11:33:07 11:33:09 11:33:12 11:33:13 11:33:14 11:33:14 11:33:14 11:33:15 11:33:17 11:33:18 11:33:19 11:33:20 11:33:20 11:33:49 11:33:50 Page 91	1 A You know, I'm -- I'm not seeing where 2 you're reading, but I know -- I have read that 3 before, and you -- and I believe you have read it 4 correctly. 5 Q And, sir, that's something in 6 Interrogatory 1, the response to, that you rejected? 7 A I -- I didn't reject it. Well, I did 8 reject it based on the expert report of 9 Dr. Hesselink and the documents where your client 10 says that development of LiDAR is critical to their 11 development. 12 Q Sir, this is Uber itself saying that 13 independently developing these trade secrets is not 14 going to have a significant or material impact on 15 the timeline for commercialization, correct? 16 A It does. 17 Q And yet you assumed the opposite, right? 18 A Yes. 19 Q And your basis for doing so is only based 20 on Dr. Hesselink, right? 21 A And the other thing I just told you in the 22 previous answer. 23 Q It being a -- what you call a critical 24 path? 25 A Right. A number of statements by a number	11:35:05 11:35:07 11:35:09 11:35:11 11:35:11 11:35:13 11:35:18 11:35:21 11:35:24 11:35:29 11:35:33 11:35:34 11:35:37 11:35:40 11:35:42 11:35:44 11:35:45 11:35:48 11:35:49 11:35:52 11:35:54 11:35:57 11:35:57 11:35:59 11:35:59 Page 93

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1 of people in your client who said that.	11:36:02	1 would come up with 3.85 years?	11:38:08
2 Q But what they didn't say is that it's	11:36:04	2 A I have never done the calculation, but I	11:38:11
3 going to be a serial process where you can't -- you	11:36:07	3 know your math is good based on prior experience.	11:38:13
4 know, you have to finish one project before you	11:36:10	4 That would be correct.	11:38:16
5 start another one, right?	11:36:12	5 Q But, sir, you're -- if all eight of these	11:38:17
6 MR. EISEMAN: Objection. Objection as to	11:36:13	6 trade secrets are misappropriated, you're not saying	11:38:20
7 form.	11:36:13	7 it's going to advance the development in	11:38:22
8 A No one has ever used the word "serial"	11:36:14	8 commercialization of Uber by 3.85 years, right?	11:38:25
9 except for your -- your damage experts. So yeah,	11:36:18	9 A I am not. I -- I mean, it is possible	11:38:29
10 that's the only people I have ever seen use that	11:36:20	10 that if all eight are being used, that it is	11:38:31
11 term. Oh, I -- pardon me. I also saw lawyers write	11:36:23	11 something above 2. But I don't have the information	11:38:36
12 it in the Daubert motion.	11:36:30	12 to calculate that --	11:38:38
13 Q (BY MR. BERRY) Sir, let's look at your	11:36:33	13 Q It's --	11:38:41
14 damages table in paragraph 285 of your report,	11:36:37	14 A -- and so I have made the assumption that	11:38:41
15 please. Sir, you assume --	11:36:42	15 along the critical path of LiDAR, all of these eight	11:38:43
16 A Pardon me. Excuse me. Your question, I	11:36:59	16 developments can be -- being done concurrently. Not	11:38:47
17 think, said page 285. Did --	11:37:00	17 serially, but concurrently.	11:38:51
18 Q Paragraph.	11:37:03	18 Q A question on paragraph 280 of your	11:39:01
19 A -- you mean paragraph?	11:37:03	19 report. In paragraph 280, you say, It's my opinion	11:39:04
20 Q Thank you.	11:37:04	20 that it's most reasonable to use the optimistic city	11:39:11
21 A So it's on page 107, if you're trying to	11:37:04	21 coverage range of incremental profit to measure the	11:39:15
22 find it for anyone else in the room.	11:37:07	22 value of accelerated development.	11:39:17
23 Q And, sir, for Trade Secret 25, you assume	11:37:09	23 That was a mistake, right?	11:39:20
24 that it would accelerate the development by two	11:37:12	24 A No, it was not a mistake.	11:39:22
25 years, right?	11:37:14	25 Q And then you state in the following	11:39:23

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1 A Yes, and on the critical path.	11:37:15	1 sentence, Therefore, the value of accelerated AV	11:39:25
2 Q And in this Figure 10, you identify your	11:37:17	2 development, I used Uber's incremental profit	11:39:29
3 assumption for each of the trade secrets for	11:37:21	3 calculations of 1.585 billion.	11:39:32
4 accelerating the development, right?	11:37:24	4 You -- you -- I guess you put	11:39:36
5 A No.	11:37:26	5 1,585 million for one year and 2,610 million for two	11:39:38
6 Q Each of them other than Trade Secret 90?	11:37:26	6 years.	11:39:44
7 A No.	11:37:29	7 Do you see that, sir?	11:39:44
8 Q Which other one do you not --	11:37:33	8 A I do. And that's in my report.	11:39:45
9 A Well --	11:37:34	9 Q But your opinions are based off the	11:39:47
10 Q -- identify?	11:37:35	10 baseline coverage?	11:39:50
11 A -- I'm trying to be responsive to your	11:37:35	11 A Yes, I use these numbers. I report them a	11:39:52
12 question. You said my assumption. These aren't my	11:37:36	12 couple times in my report. But I -- I believe the	11:39:55
13 assumptions. These are assumptions that your client	11:37:39	13 more reasonable number to use is the baseline, and	11:39:57
14 and Dr. Hesselink -- they're not Mike Wagner's	11:37:42	14 that's the numbers I'm going to put forward at	11:40:00
15 assumptions.	11:37:44	15 trial.	11:40:04
16 Q So let me rephrase. The assumptions that	11:37:45	16 Q Let's move on to your second opinion, sir,	11:40:06
17 you used and relied upon, sir, are contained in	11:37:46	17 the avoided cost opinion.	11:40:09
18 Figure 10?	11:37:50	18 And the -- the foundation for that opinion	11:40:17
19 A Yes.	11:37:51	19 is that by misappropriating these trade secrets,	11:40:20
20 Q And those assumptions that you relied upon	11:37:52	20 that Uber was able to avoid some development --	11:40:23
21 have the length of accelerated development?	11:37:56	21 developmental costs; is that fair?	11:40:26
22 A Yes.	11:37:59	22 A Yes.	11:40:29
23 Q And if you were -- for these eight trade	11:37:59	23 Q And for that opinion, there are two	11:40:31
24 secrets listed in Figure 10, if you were to add up	11:38:02	24 variables. The first is the amount of cost savings?	11:40:34
25 the accelerated development for each of them, you	11:38:05	25 A On a monthly basis.	11:40:40

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1 Q On a monthly basis? 11:40:41	1 Then in parentheses, he says, Month equal 11:42:43
2 A Yes. 11:40:42	2 20 million run rate. 11:42:46
3 Q And the second variable is the -- 11:40:42	3 Do you see that? 11:42:47
4 the length of time for any acceleration? 11:40:44	4 A I do. 11:42:48
5 A Yes. 11:40:47	5 Q And that's where you got your run rate? 11:42:48
6 Q The second variable is the same one that 11:40:48	6 A Yes. 11:42:50
7 you used for your first opinion, right? 11:40:50	7 Q What did you do, sir, to test to see 11:42:50
8 A It is. 11:40:53	8 whether that run rate was the actual Uber run rate? 11:42:53
9 Q So let's focus on your first variable, the 11:40:53	9 A Well, I didn't do anything. Again -- 11:42:56
10 monthly burn rate. And sir, you got the monthly 11:40:56	10 again, this is an expectancy measure of damages 11:42:58
11 burn rate from some notes from Mr. Bares; is that 11:41:01	11 around the time of the alleged theft. And this is 11:43:01
12 fair? 11:41:04	12 the only information I have as of that time. I have 11:43:04
13 A Yes -- 11:41:04	13 never seen any actual information as of this time. 11:43:07
14 MR. EISEMAN: Objection as to form. 11:41:04	14 Q Did you look for actual run rate 11:43:10
15 A -- that's fair. And I believe his 11:41:05	15 information at this time? 11:43:13
16 deposition testimony. 11:41:16	16 A I -- I asked if any was available, and my 11:43:14
17 (Exhibit 2275 was marked for 11:41:24	17 staff did not bring any to my attention. But -- so 11:43:17
18 identification and is attached to the transcript.) 11:41:24	18 I -- I made that attempt, but I didn't find 11:43:20
19 A Thank you. 11:41:25	19 anything. 11:43:22
20 Q (BY MR. BERRY) Sir, I have handed you 11:41:33	20 Q So did you assume that the 20 million run 11:43:23
21 what's been marked as Exhibit 2275. And. Sir, do 11:41:34	21 rate was in place in January of 2016? 11:43:26
22 you recognize these as the Bares notes that you 11:41:38	22 A I -- well, it was -- it was in place or a 11:43:29
23 relied upon? 11:41:40	23 good approximation for the time of the -- any 11:43:32
24 A It does. I recognize this document. 11:41:41	24 acceleration that I am measuring. 11:43:36
25 Q And the -- the burn rate that you used for 11:41:43	25 Q So my question was, sir: Did you assume 11:43:38
Page 98	Page 100
1 your analysis is at the top of the -- this first 11:41:49	1 the 20 million run rate was in place in January of 11:43:40
2 page of the notes, right? 11:41:51	2 2016? 11:43:43
3 A Yes. 11:41:54	3 A Oh, well, I guess I didn't really think 11:43:44
4 Q And these -- what we have here in 11:41:55	4 about that, to be perfectly honest. But I think I 11:43:46
5 Exhibit 227 is a long set of notes. I think it's 27 11:41:58	5 would have assumed that, because this is the head of 11:43:47
6 pages, right? 11:42:03	6 the department. And I think that he would be 11:43:50
7 A They're -- they are lengthy, yes. I don't 11:42:04	7 quoting what he believed his run rate was at the 11:43:52
8 know the number of pages. 11:42:06	8 time. 11:43:54
9 Q And these are notes from January 2016? 11:42:07	9 Q And, sir, did you assume that the 11:43:54
10 A Yes. 11:42:10	10 20 million run rate would remain at 20 million 11:43:56
11 Q And you got your burn rate from the top of 11:42:12	11 through the Year 2022? 11:44:00
12 this first page, right? 11:42:16	12 A No. I think it probably would change. 11:44:01
13 A I did. 11:42:18	13 But again, because it's expectancy measure, I -- I 11:44:03
14 Q And it is under the section that says "The 11:42:20	14 wouldn't change it. I mean, I -- I have seen now, 11:44:08
15 Chess Game." 11:42:23	15 since Mr. Bratic produced some information about 11:44:10
16 Do you see that? 11:42:24	16 more current run rates, that it is more than double 11:44:13
17 A Yes. 11:42:24	17 this. 11:44:16
18 Q And the third line down says, He. 11:42:24	18 But again, I don't think that's fair to 11:44:17
19 And I think that's referring to 11:42:27	19 use those numbers for an expectancy measure. 11:44:19
20 Mr. Levandowski; is that right? 11:42:29	20 Q When you say Mr. Bratic produced 11:44:23
21 A That's my assumption. 11:42:30	21 information, what information are you referring to? 11:44:25
22 Q "He would bring filtered advice about 11:42:31	22 A I -- I think he had some schedules that 11:44:27
23 when -- or what to try and not try, dot, dot, dot. 11:42:35	23 showed the -- the monthly run rate for developing 11:44:30
24 That is a day with him and our team could save us 11:42:38	24 the autonomous vehicle at Uber. 11:44:35
25 months towards 2020. 11:42:42	25 Q And so you had access to the same 11:44:37
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1 documents as Mr. Bratic, right?	11:44:40	1 the -- the testimony of your engineer, that -- and	11:46:48
2 A You know, I -- I never saw that document.	11:44:42	2 reading the report of Dr. Hesselink, that these	11:46:55
3 And if it's in my "Documents Considered List," the	11:44:43	3 estimates of time assume straight-line development.	11:46:57
4 answer is yes. But no one showed it to me at the	11:44:46	4 No problems, no issues, no software additional	11:47:02
5 time I issued my original opinion.	11:44:49	5 development. Those are not realistic assumptions.	11:47:08
6 Q And now that you have seen the documents	11:44:55	6 Q But this was the number you relied on,	11:47:11
7 that Mr. Bratic cites, does that change your	11:44:58	7 sir?	11:47:13
8 opinion?	11:45:00	8 A But it is -- I have nothing better. I	11:47:13
9 A No. Just like another one. Now, this --	11:45:00	9 think it's a conservative number. It -- and it is	11:47:15
10 this place, I could help my client by using the	11:45:02	10 the number I relied upon.	11:47:17
11 current information. But no, it does not change my	11:45:06	11 Q So to arrive at your avoided cost figure	11:47:19
12 opinion.	11:45:10	12 for Trade Secret 9, you take the four months that it	11:47:22
13 Q Because your opinion is to use the	11:45:10	13 would take to independently develop Trade Secret 9	11:47:25
14 expectancy in January of 2016 of the run rate?	11:45:12	14 and multiply that by the 20 million run rate?	11:47:28
15 A Correct.	11:45:17	15 A Correct.	11:47:33
16 Q And if later events change the -- that	11:45:17	16 Q So you would arrive at \$80 million?	11:47:33
17 expectancy, you disregard those because you're	11:45:20	17 A Approximately, yes.	11:47:35
18 looking for January 2016 expectancy?	11:45:24	18 Q And, sir, is it your opinion that Trade	11:47:36
19 MR. EISEMAN: Objection as to form.	11:45:26	19 Secret 9, by misappropriating that, Uber was able to	11:47:38
20 A Yes. And it -- what -- what -- again,	11:45:27	20 save \$80 million, right?	11:47:41
21 whether it helps my client or hurts my client, in	11:45:28	21 A Well, if -- and you said it -- it's my	11:47:43
22 that measure of damages, I think that information is	11:45:32	22 assumption. If, again, that -- this four months is	11:47:45
23 irrelevant.	11:45:34	23 on the critical path of development and your client	11:47:49
24 Q (BY MR. BERRY) And, sir, the run rate that	11:45:34	24 will get to market four months earlier, that that is	11:47:53
25 you used was the run rate for the entire Uber AV	11:45:36	25 the -- the cost that they have saved.	11:47:56

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1 organization, right?	11:45:41	1 Q And you didn't conclude it was on the	11:47:57
2 A Correct.	11:45:44	2 critical path, did you, personally?	11:48:01
3 Q And by using the run rate for the entire	11:45:48	3 A I -- I don't have enough facts to -- to	11:48:02
4 AV organization, you assumed that each trade secret	11:45:50	4 have an independent opinion of it. But all the	11:48:05
5 would advance the development of the entire	11:45:53	5 facts I have seen are consistent with that position	11:48:08
6 department -- the entire program?	11:45:58	6 Q In fact, Uber's interrogatory response	11:48:11
7 A Not exactly, no. I assumed, again based	11:46:00	7 tells you it's not on the critical path, right?	11:48:14
8 on documents that I have reviewed and	11:46:04	8 A Yes In preparing for this litigation,	11:48:17
9 Dr. Hesselink's opinion, that these trade secrets	11:46:05	9 that's their statement I understand that And I	11:48:19
10 individually and in combination are in the -- on the	11:46:10	10 believe that's based on their independent expert who	11:48:22
11 critical path of development of the autonomous	11:46:13	11 has that opinion	11:48:25
12 vehicle.	11:46:16	12 Q And if, in fact, Uber is correct that	11:48:26
13 And if that's true, then it's appropriate	11:46:17	13 these trade secrets are not on the critical path,	11:48:27
14 to use all expenses of the department.	11:46:20	14 then your damages model does not work?	11:48:30
15 Q Let's look at Trade Secret 9. Again,	11:46:22	15 MR. EISEMAN: Objection as to form	11:48:35
16 that's the FAC lens. And it was your opinion, sir	11:46:24	16 A I would agree with that That -- that	11:48:35
17 -- or you relied on Uber to say that it would take	11:46:29	17 if -- if that's not the case, I would need to revise	11:48:36
18 four months to independently develop Trade Secret 9,	11:46:34	18 the times that I have to multiply the 20 million run	11:48:40
19 right?	11:46:37	19 rate by	11:48:45
20 A Right. And realizing the limitations of	11:46:38	20 Q (BY MR. BERRY) And you have not done that	11:48:46
21 that number. But I have nothing else to use, so I	11:46:40	21 work?	11:48:47
22 have used it, yes.	11:46:42	22 A No I have no information to do that	11:48:48
23 Q What do you mean, sir, by "the limitations	11:46:43	23 Q So for this Trade Secret 9 we have been	11:48:50
24 of that number"?	11:46:45	24 discussing, it is your opinion that it would save	11:48:52
25 A That -- that -- my understanding based on	11:46:46	25 Uber \$80 million, right?	11:48:54

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1 A Based on the inputs and the assumptions I 11:48:57	1 A Is that the number your expert has put 11:50:47
2 have been given, yes. 11:48:59	2 forward? If his assumptions are correct, yes. But 11:50:50
3 Q When would Uber have realized those cost 11:49:01	3 if they're wrong, no. 11:50:52
4 savings? 11:49:03	4 Q (BY MR. BERRY) So let's now -- we have 11:51:01
5 A They would realize it at -- at the time 11:49:05	5 been talking about Trade Secret 9. Let's turn to 11:51:02
6 they have accelerated their development. 11:49:07	6 Trade Secret 25. And you rely on the assumptions, 11:51:05
7 Q And when is that, sir? 11:49:10	7 sir, that Trade Secret 25 would advance the 11:51:08
8 A I don't have any information on that. I 11:49:11	8 commercialization of Uber's AV program by two years, 11:51:11
9 don't know. 11:49:13	9 right? 11:51:15
10 Q Has -- when did you assume Uber 11:49:13	10 A Yes. 11:51:16
11 misappropriated Trade Secret 9? 11:49:16	11 Q And by doing so, you assume that it would 11:51:17
12 A Again, I had a range. I -- I don't have 11:49:20	12 save Uber two years' worth of the burn rate for the 11:51:20
13 that information. That's liability questions. And 11:49:21	13 entire AV organization, right? 11:51:24
14 no one has told me when they -- they have actually 11:49:24	14 A I do. 11:51:26
15 used it to accelerate the development. I don't 11:49:28	15 Q How did Trade Secret 25 save Uber money 11:51:31
16 know. 11:49:29	16 with respect to cameras? 11:51:36
17 Q Well, I was asking: When did you assume 11:49:31	17 MR. EISEMAN: Objection as to form. 11:51:38
18 they misappropriated? 11:49:33	18 A I -- I have no idea if it has anything to 11:51:39
19 A Oh, I -- you know, it's -- sometime in 11:49:34	19 do with cameras. I -- I wouldn't believe that it 11:51:42
20 the -- the late 2015 or early 2016 time frame is the 11:49:36	20 would. 11:51:44
21 best I can give you. 11:49:41	21 Q (BY MR. BERRY) How did Trade Secret 25 11:51:45
22 Q In that time from when they were assume -- 11:49:43	22 save Uber money with respect to radar? 11:51:48
23 when you assumed they misappropriated to the current 11:49:45	23 A I -- I -- again, I don't know the answer 11:51:51
24 day, has Uber actually saved any costs, any money by 11:49:48	24 to that question. Again, I do believe, even though 11:51:52
25 using Trade Secret 9? 11:49:53	25 it's a semitechnical opinion, but based on my 11:51:57

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1 MR. EISEMAN: Objection as to form. 11:49:55	1 engineering background that -- you know, again, as 11:52:01
2 A I -- that's a technical question. I -- I 11:49:55	2 you said before, not everyone in the organization 11:52:04
3 have no information on that. I don't know. 11:49:57	3 works on every part of the product. There are 11:52:07
4 Q (BY MR. BERRY) You didn't look at that, 11:49:58	4 independent teams working on these things. That -- 11:52:07
5 did you, sir? 11:50:00	5 those -- those items would be being developed 11:52:10
6 A No. And I -- and that's not in my area of 11:50:01	6 independently. 11:52:11
7 expertise. I wouldn't look at that, unless I want 11:50:04	7 Q Concurrently? 11:52:12
8 to bill my client for work that's not useful. 11:50:07	8 A Concurrently. But if the entire timeline 11:52:14
9 Q You concluded that Trade Secret 9 would 11:50:12	9 is accelerated, then your client has avoided their 11:52:18
10 save Uber \$80 million, right? 11:50:15	10 whole development effort by that period of time. 11:52:21
11 A Yes. 11:50:17	11 And there's two things that could happen. 11:52:24
12 Q Where would those cost savings be? What 11:50:18	12 One, a radar engineer does the final 11:52:27
13 line item on the P&L statement? 11:50:20	13 complete, absolutely-done-radar technology, and they 11:52:31
14 A It would be on the -- well, it's -- it's 11:50:21	14 would lay him off. Then I have overstated the 11:52:34
15 not one line item. It's the total expenses of 11:50:21	15 numbers. 11:52:37
16 developing their autonomous vehicle. It's all those 11:50:25	16 Or it's more likely that he would be doing 11:52:37
17 expenses. 11:50:28	17 tweaks and other things or they would be playing 11:52:40
18 Q So it would save them expenses in 11:50:28	18 poker while they're waiting for someone else to 11:52:42
19 San Francisco, right? 11:50:30	19 catch up, and they're -- they're now on the critical 11:52:44
20 A I would assume so. 11:50:32	20 path again. 11:52:47
21 Q It would save them expenses in Pittsburgh? 11:50:33	21 THE COURT REPORTER: Wait. 11:52:48
22 A I would assume so. 11:50:37	22 A Other things might happen. I can't model 11:52:48
23 Q Isn't it more reasonable to say that Trade 11:50:40	23 that. 11:52:51
24 Secret 9, at most, is worth 150,000? 11:50:41	24 Q (BY MR. BERRY) You just don't know, right? 11:52:51
25 MR. EISEMAN: Objection as to form. 11:50:46	25 A No, I -- I don't know. But again, based 11:52:52

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<p>1 on your client's statements of the existential 11:52:54 2 threat that AV does to their historical business and 11:52:58 3 they're putting tons of money, now doubling the 11:53:02 4 development costs, the chances are they -- they 11:53:06 5 would not be laying anyone off. In fact, they may 11:53:07 6 even be hiring more people during this time period. 11:53:10 7 Q Is it every component of later -- of LiDAR 11:53:14 8 on the critical path? 11:53:15 9 MR. EISEMAN: Objection as to form. 11:53:17 10 A I don't know the answer to that question. 11:53:18 11 Again, that would be a question for Dr. Hesselink. 11:53:18 12 Q (BY MR. BERRY) Now, sir, if Uber didn't 11:53:22 13 misappropriate Trade Secret 25, you assume it would 11:53:24 14 take them two years to independently develop that? 11:53:29 15 A I have been told that by Dr. Hesselink. 11:53:34 16 Q And according to the work that you have 11:53:35 17 done, sir, you assume that nothing else is going to 11:53:36 18 happen at Uber during those two years, but costs are 11:53:39 19 going to continue occurring? 11:53:42 20 A That's absolutely false. I didn't make 11:53:44 21 that assumption. And Mr. Bratic doesn't know what 11:53:46 22 he's talking about when he criticized me for that. 11:53:50 23 No. I do think that all of these people 11:53:50 24 will be doing things in that time period. They're 11:53:52 25 just not advancing the ball to getting their product 11:53:55</p>	<p>1 MR. EISEMAN: Objection as to form. 11:54:50 2 A I agree with that. 11:54:51 3 Q (BY MR. BERRY) Let's move on to Trade 11:54:52 4 Secret 90 now, sir. It's your Tyto opinion. And 11:54:53 5 Tyto -- Trade Secret 90 relates to fiber lasers; is 11:54:58 6 that right? 11:55:03 7 A That's my understanding. 11:55:03 8 Q And you understand that Uber does not 11:55:04 9 currently use Trade Secret 90? 11:55:06 10 A That's -- that -- I have been told that, 11:55:09 11 yes. 11:55:09 12 Q And according to Waymo's expert, 11:55:11 13 Dr. Hesselink, he opines that Uber's 11:55:13 14 misappropriation of Trade Secret 90 saved it two 11:55:17 15 years and five months based on the acquisition of 11:55:21 16 Tyto? 11:55:25 17 A Yes. 11:55:25 18 Q And your accelerated development opinion 11:55:26 19 is based on time savings, right? 11:55:28 20 A Yes. 11:55:32 21 Q So if we were to take those two years and 11:55:32 22 five months and put it into your accelerated 11:55:34 23 development model, it would say that Trade Secret 90 11:55:37 24 is worth over \$2 billion, right? 11:55:39 25 A It would. 11:55:42</p>
<p>Page 110</p> <p>1 to market 11:53:58 2 Q Because the one critical path at Uber is 11:53:59 3 Trade Secret 25? 11:54:02 4 MR EISEMAN: Objection as to form 11:54:03 5 A No, it's not the one. There's probably 11:54:03 6 plenty of them. I mean, I have developed critical 11:54:06 7 paths in my work as an engineer, and there's plenty 11:54:07 8 of tasks on the critical path. But wherever you are 11:54:07 9 on the critical path -- 11:54:14 10 THE COURT REPORTER: Please slow down 11:54:14 11 A -- there is going to be certain items that 11:54:15 12 everyone else is waiting on before the next steps 11:54:17 13 can be taken 11:54:19 14 Q (BY MR. BERRY) And, sir, did you assume 11:54:20 15 that Trade Secret 25 is an bottleneck for Uber's 11:54:21 16 entire AV program? 11:54:25 17 A Well, I -- I haven't assumed that, but I 11:54:27 18 can draw that conclusion based on Dr. Hesselink's 11:54:29 19 opinion and the fact that -- this is very data 11:54:31 20 intensive information to test [REDACTED], and I 11:54:34 21 do believe my client spent far more than two years 11:54:38 22 developing [REDACTED] 11:54:42 23 Q And if, in fact, Trade Secret 25 is not a 11:54:42 24 bottleneck for the entire AV program, your damages 11:54:45 25 model does not work? 11:54:49</p>	<p>Page 112</p> <p>1 Q But that's an absurd number for something 11:55:42 2 that Uber doesn't use? 11:55:47 3 MR EISEMAN: Objection as to form 11:55:49 4 A I don't know whether it's absurd -- absurd 11:55:50 5 or not. If -- if Dr. Hesselink is right, then -- 11:55:50 6 and it's on the critical path, then you -- that 11:55:52 7 number is appropriate 11:55:54 8 Q (BY MR. BERRY) And that would make Trade 11:55:55 9 Secret 90 to be -- the most valuable trade secret 11:55:57 10 in -- in your report, right? 11:56:01 11 A It would 11:56:02 12 Q And yet the report you signed in your 11:56:02 13 opinion is that Trade Secret 90 is the least 11:56:07 14 valuable trade secret? 11:56:09 15 A I believe that's correct 11:56:11 16 Q Why didn't you use your avoided cost 11:56:20 17 method to value Trade Secret 90? 11:56:22 18 A That -- there was this other method to 11:56:24 19 look at an -- an acquisition that largely related to 11:56:27 20 that -- that type of product 11:56:31 21 Q When you say "largely related to that type 11:56:34 22 of product," you're not referring to largely is 11:56:36 23 Trade Secret 90, are you? 11:56:41 24 MR EISEMAN: Objection as to form 11:56:41 25 A I'm sorry. I didn't understand the 11:56:42</p>

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1 question.	11:56:43		1 A They may or may not. A lot of patents are	11:58:21
2 Q (BY MR. BERRY) Let me -- I'll withdraw	11:56:43		2 just more cost than value, but I would assume they	11:58:22
3 that question.	11:56:44		3 have some value.	11:58:25
4 So you used an entirely different model	11:56:48		4 Q (BY MR. BERRY) But you did no work to try	11:58:26
5 for Trade Secret 90, right?	11:56:50		5 to assess that value?	11:58:29
6 A Yes. And any other trade secrets.	11:56:52		6 A That is correct.	11:58:31
7 Q And you looked at the amount that Otto	11:56:54		7 Q In addition to the intellectual property	11:58:33
8 paid to acquire Tyto, right?	11:56:57		8 of employees, Otto also received tangible property	11:58:35
9 A Yes. Minus the stock grants to the	11:57:00		9 from acquisition of Tyto?	11:58:40
10 employees.	11:57:02		10 A I think there probably was some tangible	11:58:43
11 Q So if we look at the total cash	11:57:02		11 property, yes.	11:58:45
12 consideration that Otto paid to acquire Tyto, it's	11:57:05		12 Q And in fact, the tangible property	11:58:46
13 \$8 million, right?	11:57:11		14 includes all tools, equipment, parts and inventory	11:58:48
14 A Correct.	11:57:11		14 used to build and assemble fiber lasers and laser	11:58:51
15 Q For that 8 million in cash consideration,	11:57:12		15 scanners, right?	11:58:56
16 Otto received a number of benefits, right?	11:57:13		16 A That's true.	11:58:57
17 A I agree with that.	11:57:17		17 Q That property had value?	11:58:58
18 Q One type of benefit is it received six	11:57:19		18 A I would assume it has some value.	11:58:59
19 Tyto employees, right?	11:57:21		19 Q What work did you do, sir, to value that	11:59:01
20 A They did.	11:57:22		20 property?	11:59:03
21 Q Another type of benefit is that Otto	11:57:23		21 A I didn't do any work.	11:59:04
22 received intellectual property from Tyto?	11:57:26		22 Q Do you know what tools were included?	11:59:05
23 MR. EISEMAN: Objection as to form?	11:57:28		23 A No.	11:59:07
24 A I -- I -- I do believe there was some	11:57:29		24 Q Do you know what equipment was included?	11:59:08
25 intellectual property. I don't recall seeing a	11:57:32		25 A I do not.	11:59:10

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1 schedule of what it was.	11:57:34		1 Q Do you know what parts and inventory was	11:59:10
2 Q (BY MR. BERRY) In fact, sir, Otto received	11:57:35		2 included?	11:59:13
3 nine patent applications for that \$8 million that it	11:57:38		3 A No.	11:59:13
4 paid to acquire Tyto?	11:57:42		4 Q And the tangible property also includes	11:59:14
5 MR. EISEMAN: Objection as to form.	11:57:44		5 all equipment used to test and calibrate fiber	11:59:16
6 A You know, I have some recollection of	11:57:45		6 lasers and laser scanners, right?	11:59:21
7 that, but I -- I believe you're telling me the facts	11:57:47		7 A It does.	11:59:22
8 that are correct.	11:57:50		8 Q What was the value of that equipment?	11:59:23
9 Q (BY MR. BERRY) And in fact, four of those	11:57:50		9 A I have no information on that.	11:59:24
10 patent applications were still pending at the time	11:57:52		10 Q Did you look into that?	11:59:27
11 of the acquisition, right?	11:57:54		11 A No.	11:59:28
12 A Again, I don't remember that level of	11:57:55		12 Q So for -- to value Trade Secret 90, you	11:59:29
13 detail. I do know -- and you have refreshed my	11:57:57		13 applied the entire 8 million in cash consideration	11:59:31
14 recollection that there were some patent	11:57:59		14 that Otto paid to acquire Tyto?	11:59:33
15 applications, but I don't remember the details.	11:58:00		15 A Yes.	11:59:35
16 Q And, sir, you did nothing to try to value	11:58:02		16 Q And you did not attempt, sir, to apportion	11:59:35
17 those patent applications, right?	11:58:04		17 out any value for the other benefits that Tyto	11:59:38
18 A No, I have not apportioned out that value.	11:58:06		18 received -- or that Otto received?	11:59:42
19 Q Did you read the patent applications?	11:58:09		19 A Correct.	11:59:43
20 A No. I think re -- I think I recall	11:58:10		20 MR. EISEMAN: Objection as to form.	11:59:44
21 reading the titles, but I don't recall -- I did not	11:58:12		21 A Again, and that's based on my	11:59:45
22 read the applications.	11:58:15		22 understanding that I expect that Mr. Bratic would	11:59:46
23 Q Well, they obviously have some value,	11:58:16		23 give me that information, and then I would consider	11:59:49
24 right?	11:58:19		24 it and possibly change my opinion.	11:59:50
25 MR. EISEMAN: Objection as to form.	11:58:19		25 Q (BY MR. BERRY) My question, sir, is: You	11:59:53

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1 didn't do it? 11:59:53	1 that will be introduced sometime in the future has 12:01:48
2 A That -- 11:59:57	2 no established profitability, right? 12:01:51
3 Q -- you did not apportion it? 11:59:57	3 A I agree with that. 12:01:54
4 A -- that is correct. 11:59:59	4 Q And that autonomous vehicle that's going 12:01:54
5 Q Let's look at your reasonable royalty 11:59:59	5 to be introduced at some point in the future has no 12:01:57
6 opinion, please. 12:00:01	6 current commercial success? 12:02:01
7 MR. EISEMAN: Mr. Berry, you have got to 12:00:02	7 A Correct. 12:02:05
8 slow down. Okay. I mean, it's not fair to the 12:00:04	8 Q And that autonomous vehicle has no current 12:02:05
9 court reporter. 12:00:08	9 popularity? 12:02:08
10 Q (BY MR. BERRY) So -- so we already talked 12:00:08	10 A Only in theory, not in -- in practice. 12:02:12
11 the Book of Wisdom, right? 12:00:10	11 Q Factor 11 looks at the extent to which the 12:02:18
12 A We did. 12:00:11	12 infringer has made use of the invention and any 12:02:23
13 Q And you conclude it's appropriate, when 12:00:11	13 evidence probative -- probative of the value of that 12:02:26
14 determining a reasonable royalty, to apply the -- 12:00:17	14 use, right? 12:02:30
15 the logic from the Book of Wisdom? 12:00:19	15 A Yes. 12:02:31
16 A I do. 12:00:22	16 Q And your baseline royalty already looks at 12:02:31
17 Q Sir, do you also agree that the cost to 12:00:28	17 the value of the use from the perspective of Uber, 12:02:36
18 independently development a trade secret serves as 12:00:31	18 right? 12:02:40
19 an upper limit for the reasonable royalty? 12:00:34	19 A It does. 12:02:42
20 MR. EISEMAN: Objection as to form. 12:00:36	20 Q And so the value of that use is already 12:02:43
21 A I do. 12:00:37	21 incorporated into your reasonable royalty through 12:02:45
22 Q (BY MR. BERRY) To arrive at a reasonable 12:00:40	22 the baseline? 12:02:49
23 royalty, you started with a baseline royalty, right? 12:00:42	23 A In part. 12:02:49
24 A That's generally what I do. 12:00:47	24 Q What part is not? 12:02:50
25 Q And the baseline royalty you used was the 12:00:48	25 A The -- I used the most conservative 12:02:51
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1 accelerated development opinion of yours, right? 12:00:50	1 assumptions. And there's -- I didn't even use 12:02:54
2 A Yes. 12:00:52	2 the -- like, the average base case. And there's 12:02:57
3 Q And then you applied the 15 12:00:56	3 also optimistic projections. And if you -- if you 12:03:01
4 Georgia-Pacific factors to that baseline royalty, 12:01:00	4 appropriately risk adjust all of those and come up 12:03:04
5 right? 12:01:03	5 with a present value, the number would be higher 12:03:07
6 A Well, I really apply 14 factors. And the 12:01:03	6 than my baseline. And that's what I'm talking about 12:03:09
7 15th factor is the hypothetical negotiation where 12:01:06	7 in GP Factor No. 11. 12:03:11
8 you consider the information in the 14 factors. 12:01:08	8 Q But the profits from the accelerated 12:03:14
9 Q Let's look at the -- Factor 8 looks at the 12:01:11	9 development model are already incorporated in the 12:03:20
10 established profitability of the product embodying 12:01:15	10 baseline, right? 12:03:22
11 the trade secrets, its commercial success, and its 12:01:20	11 A As -- as I just explained it, yes. I 12:03:24
12 current popularity, right? 12:01:23	12 agree with that. 12:03:26
13 A Yes. 12:01:26	13 Q Based upon your analysis of the 12:03:30
14 Q And Factor 8 talks about the product 12:01:26	14 Georgia-Pacific factors, you concluded it was 12:03:31
15 embodying the trade secrets. And here, sir, that 12:01:29	15 reasonable to adjust upward by 10 percent, the 12:03:34
16 product is Uber's AV program, right? It -- let me 12:01:31	16 reasonable royalty, right? 12:03:38
17 -- 12:01:35	17 A I did. 12:03:40
18 MR. EISEMAN: Objection. 12:01:36	18 Q How did you calculate 10 percent? 12:03:41
19 Q (BY MR. BERRY) -- ask a different 12:01:36	19 A Well, you -- first, you assumed a fact not 12:03:43
20 question. The product here is Uber's autonomous 12:01:37	20 in evidence that I calculated it. Listen, I have 12:03:45
21 vehicle? 12:01:40	21 been doing this for 40 years. I have seen hundreds 12:03:47
22 MR. EISEMAN: Objection as to form. 12:01:40	22 of Georgia-Pacific analyses. I have never seen a, 12:03:50
23 A Right. The autonomous vehicle that will 12:01:41	23 quote, calculation of an adjustment from a baseline. 12:03:53
24 be introduced commercially in the future. 12:01:43	24 Q So let me -- 12:03:56
25 Q (BY MR. BERRY) That autonomous vehicle 12:01:47	25 A The quality -- the Georgia-Pacific factors 12:03:57
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1 are qualitative mostly in nature. Some -- in some 2 fact situations you can quantify some of it. 3 But it's qualitative. It's just like in 4 the real world where two parties negotiate over a 5 table about a royalty rate. They -- they all 6 overstate their strengths, understate their 7 weaknesses. Both sides are doing that. 8 All the facts are then considered and 9 discussed, and a judgment is made as to what the 10 number will be. That's the same that I did here.	12:03:59 12:04:04 12:04:08 12:04:11 12:04:14 12:04:16 12:04:19 12:04:21 12:04:24 12:04:29 12:04:33 12:04:36 12:04:39 12:04:42 12:04:44 12:04:48 12:04:48 12:04:48 12:04:50 12:04:52 12:04:52 12:04:53 12:04:54 12:04:56 12:04:59		1 A I did not. 12:06:08 2 Q And your reasonable royalty opinion 12:06:13 3 assumes that the court will not grant a permanent injunction, right? 12:06:16 4 A I -- I believe that's correct. 12:06:18 5 Q And if the court -- if the court were to grant a permanent injunction, your reasonable royalty opinion would no longer be applicable? 12:06:20 6 A I -- I think there would have to be 12:06:23 7 12:06:26 8 A I -- I think there would have to be 12:06:28 9 12:06:30 10 adjustments to it. 12:06:30	12:06:08 12:06:13 12:06:16 12:06:18 12:06:20 12:06:23 12:06:26 12:06:28 12:06:30
11 I had -- it's based on the facts in my 12 Georgia-Pacific analysis discussion, and then it's 13 based on applying my professional judgment to that 14 information to arrive at that number, which I 15 thought was a conservative number. 16 MR. BERRY: Move to strike as 17 nonresponsive.	12:04:33 12:04:36 12:04:39 12:04:42 12:04:44 12:04:48 12:04:48 12:04:48 12:04:50 12:04:52 12:04:52 12:04:53 12:04:54 12:04:56 12:04:59		11 Q Sir, did you interview anybody between the time of your Opening Report and your Reply Report? 12 A No. If you're talking about, like, at my client, no. Or an expert, no. 13 Q And, sir, do you have any notes from any interviews that you have done in this case? 14 A Yes. 15 Q What types of notes? 16 A Well, when I had telephone -- the various telephone communications, I -- I ex -- frequently would write some notes down of things I wanted to remember. 17 Q And did you consider those notes at arriving at your opinions in this case? 18 A No.	12:06:32 12:06:34 12:06:38 12:06:40 12:06:42 12:06:44 12:06:48 12:06:49 12:06:51 12:06:53 12:06:57 12:07:01 12:07:01 12:07:03 12:07:05
				Page 124
1 would know in GP Factors 1 and 2, I said they were 2 neutral because there were none. 3 Q A 10 percent upward adjustment will result 4 in a 110 percent royalty rate, right? 5 A In -- 6 MR. EISEMAN: Objection as to form. 7 A -- relationship to the unjust enrichment 8 calculation, yes.	12:05:01 12:05:06 12:05:08 12:05:12 12:05:16 12:05:16 12:05:16 12:05:20 12:05:27 12:05:31 12:05:35 12:05:38 12:05:42 12:05:43 12:05:43 12:05:46 12:05:48 12:05:49 12:05:51 12:05:46 12:05:54 12:05:56 12:05:59 12:06:02 12:06:03 12:06:05		1 Q Not at all? 12:07:05 2 A No 12:07:06 3 Q In arriving at your opinions in this case, 4 did you con -- did you look at those notes? 5 A I don't think I have looked at them since 6 I wrote them 12:07:13 7 MR BERRY: Well, we request that they be produced 12:07:15 8 MR EISEMAN: Why don't you put it in an e-mail and we'll get back to you about it 12:07:18 9 MR BERRY: Well, sir, that's all the questions I have for you today I appreciate your time I believe that other people might have questions or -- 10 MR SCHUMAN: I have some -- I have some questions I don't think it'll take very long If it's okay with the court reporter and the videographer and the witness, I would prefer to just -- instead of taking a lunch break -- 11 MR BERRY: Yeah, me too 12 THE VIDEOGRAPHER: It would be better, though, if you could come down here photographic and audio purposes Shall we go off the record or -- 13 MR BERRY: No I can move 14 MR SCHUMAN: I'm not on the --	12:07:05 12:07:06 12:07:07 12:07:08 12:07:12 12:07:13 12:07:15 12:07:18 12:07:18 12:07:21 12:07:22 12:07:23 12:07:26 12:07:29 12:07:32 12:07:34 12:07:36 12:07:39 12:07:41 12:07:41 12:07:44 12:07:47 12:07:49
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1 A Yeah, but I -- he thinks -- he thinks my profile is not as good as my straight face	12:07:51	1 values the accelerated development to -- that Uber was able to achieve through the alleged misappropriation of these nine trade secrets, right?	12:10:05
3 THE VIDEOGRAPHER: What he said Do you want to stay on or -- we can stay on	12:07:57	4 A Yes.	12:10:16
5 EXAMINATION BY COUNSEL FOR THE DEFENDANTS	12:08:03	5 Q And -- and your opinion -- that -- we'll call that your first unjust enrichment opinion.	12:10:17
6 BY MR. SCHUMAN: 12:08:04		7 That opinion is based on internal Uber documents showing some accelerated development,	12:10:24
7 Q All right Good afternoon, Mr Wagner	12:08:07	8 correct?	12:10:31
8 A Good afternoon, Mr Schuman	12:08:10	10 A That's fair.	12:10:32
9 Q Mr Wagner, I represent a company called Otto Trucking LLC	12:08:14	11 Q That opinion is not based on any Otto Trucking documents; is that right?	12:10:34
10 Do you know who Otto Trucking is?	12:08:16	12 A It is not.	12:10:36
11 is?	12:08:18	13 Q So would you agree with me then that your first unjust -- unjust enrichment theory is not applicable to Otto Trucking?	12:10:42
12 A I do	12:08:19	14 MR. EISEMAN: Objection as to form.	12:10:48
13 Q Who is Otto -- what's your understanding of who Otto Trucking is?	12:08:20	15 A You know, I -- what I would say is that unless Uber exercises its option to purchase Otto Trucking or shares this accelerated depreciation --	12:10:56
14 A Well, I -- I believe it's a company that's owned by -- principally owned by Mr Levandowski and Lior	12:08:23	16 company between now and sometime in November And it is a company that is focused on applying LiDAR technology to trucks	12:11:01
15 And it is in -- has signed an -- an acquisition of purchase agreement with Uber where	12:08:34	17 21 or accelerating development with Otto Trucking, then my calculations have nothing to do with your client.	12:11:04
16 it -- it's Uber's discretion to purchase that	12:08:37	18 Q (BY MR. SCHUMAN) Right. And as we sit here today, you know that Uber has not exercised the option to the purchase Otto Trucking, right?	12:11:15
17 company between now and sometime in November And it is a company that is focused on applying LiDAR technology to trucks	12:08:42	19 Page 128	12:11:18
18 Q Do you know whether Otto Trucking has any employees?	12:08:48	20 Page 128	
19 employees?	12:08:52		
20 Q Do you know whether Otto Trucking has any employees?	12:08:56		
21 employees?	12:08:58		
1 A Well, my understanding is they do not, at least from the last facts that I have.	12:08:59	1 A I -- I don't know that. But those facts have not been brought to my attention. And if it had happened, I fully expect I would be aware of it.	12:11:21
2 Q Do you have any understanding as to whether Otto Trucking does any research and development activities?	12:09:01	2 Q Right. And the accelerated -- sharing the accelerated development with Otto Trucking, what did you mean by that?	12:11:23
3 A I -- I -- I don't know whether they do or not. I understand that Uber is advancing development funds to them, so I -- I would think they do. But whether that's done with -- actually being done by Uber and not your client, I -- I don't know.	12:09:12	3 A Well, if -- if -- if as a result of Uber accelerating development of LiDAR on their vehicles for their transportation as a service, they -- they're also -- then by Otto Trucking -- and Otto Trucking is going to get into the market one or two years earlier than they otherwise would -- then I think it might be appropriate to your client. But unless those facts occur, what I have calculated has nothing to do with your client.	12:11:26
4 Q Okay. You're not offering any opinions in this case as to any damages caused to Waymo specific to Otto Trucking; is that right?	12:09:29	4 Q All right. And as we sit here today, you do know that those facts that you have just in your last answer summarized have not occurred yet, right?	12:11:30
5 A That's correct.	12:09:31	5 A That's correct.	12:11:33
6 Q Okay. And so then your damages -- I'm going to walk through briefly -- not in the level of detail that Uber's counsel did, but I just want to walk through your -- your principal opinions in this case.	12:09:38	6 Q Your second unjust enrichment calculation is based on the cost that -- that you have opined Uber saved in its development of autonomous vehicles through alleged use of these nine trade secrets, right?	12:11:36
7 You have offered two unjust enrichment calculations and a -- and a reasonable royalty measure, correct?	12:09:44	7 A All right. And as we sit here today, you do know that those facts that you have just in your last answer summarized have not occurred yet, right?	12:11:43
8 A That's fair.	12:09:46	8 A That's correct.	12:11:46
9 Q Okay. The first unjust enrichment measure	12:10:00	9 Q All right. And as we sit here today, you do know that those facts that you have just in your last answer summarized have not occurred yet, right?	12:11:50
10 Q Okay. The first unjust enrichment measure	12:10:01	10 A That's correct.	12:11:54
		11 Q Your second unjust enrichment calculation is based on the cost that -- that you have opined Uber saved in its development of autonomous vehicles through alleged use of these nine trade secrets, right?	12:11:58
		12 A All right. And as we sit here today, you do know that those facts that you have just in your last answer summarized have not occurred yet, right?	12:12:00
		13 Q All right. And as we sit here today, you do know that those facts that you have just in your last answer summarized have not occurred yet, right?	12:12:03
		14 A That's correct.	12:12:05
		15 Q All right. And as we sit here today, you do know that those facts that you have just in your last answer summarized have not occurred yet, right?	12:12:06
		16 A That's correct.	12:12:07
		17 Q All right. And as we sit here today, you do know that those facts that you have just in your last answer summarized have not occurred yet, right?	12:12:10
		18 A That's correct.	12:12:13
		19 Q All right. And as we sit here today, you do know that those facts that you have just in your last answer summarized have not occurred yet, right?	12:12:14
		20 A That's correct.	12:12:16
		21 Q Your second unjust enrichment calculation is based on the cost that -- that you have opined Uber saved in its development of autonomous vehicles through alleged use of these nine trade secrets, right?	12:12:20
		22 A All right. And as we sit here today, you do know that those facts that you have just in your last answer summarized have not occurred yet, right?	12:12:25
		23 Q All right. And as we sit here today, you do know that those facts that you have just in your last answer summarized have not occurred yet, right?	12:12:29
		24 A All right. And as we sit here today, you do know that those facts that you have just in your last answer summarized have not occurred yet, right?	12:12:31
		25 Q All right. And as we sit here today, you do know that those facts that you have just in your last answer summarized have not occurred yet, right?	12:12:34
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1 A Yes	12:12:29	1 be representing their interests at that point. But	12:14:38
2 Q And again, that's based on Uber documents	12:12:29	2 I -- that's only way I see my work as relevant to	12:14:41
3 showing a \$20 million per-month run rate for its R&D	12:12:33	3 your client.	12:14:44
4 program on autonomous vehicles, right?	12:12:39	4 Q (BY MR. SCHUMAN) Right. So the same	12:14:49
5 A Yeah, documents and I believe deposition	12:12:42	5 caveat -- the same caveats that you're referring to	12:14:49
6 testimony of Mr Bares	12:12:44	6 in that answer are -- are the sort of -- we'll call	12:14:51
7 Q Fair Right And -- and so your second	12:12:45	7 them speculative future possibility that Uber	12:14:54
8 unjust enrichment calculation is not based on any	12:12:48	8 acquires Otto Trucking and shares some of these	12:14:58
9 Otto Trucking-specific evidence; is that fair?	12:12:50	9 benefits that you have quantified with Otto Trucking	12:15:01
10 A That is fair	12:12:55	10 in the future; is --	12:15:04
11 Q So your second unjust enrichment	12:12:55	11 MR. EISEMAN: Objection.	12:15:05
12 calculation, would you agree with me, is not	12:12:57	12 Q (BY MR. SCHUMAN) -- that --	12:15:05
13 applicable to Otto Trucking?	12:13:00	13 MR. EISEMAN: Objection. Sorry.	12:15:06
14 MR EISEMAN: Objection as to form	12:13:02	14 Q (BY MR. SCHUMAN) Am I --	12:15:07
15 A Yes, with the same caveats as I discussed	12:13:02	15 MR. EISEMAN: Objection as to form.	12:15:09
16 on the first calculation	12:13:05	16 Q (BY MR. SCHUMAN) I didn't ask the question	12:15:09
17 Q (BY MR SCHUMAN) Right So assume --	12:13:07	17 yet. Do you understand that -- do I understand your	12:15:10
18 assume for purposes of this question that Otto	12:13:08	18 caveats correctly?	12:15:14
19 Trucking pays Uber some amount of money for the work	12:13:11	19 MR. EISEMAN: Objection as to form.	12:15:15
20 that Uber employees are -- are doing on	12:13:18	20 A Yes. If you took just the	12:15:16
21 autonomous -- the development of autonomous trucks	12:13:22	21 word "speculative" out of your question, I would	12:15:18
22 Have you seen any evidence in the	12:13:25	22 agree with what you said.	12:15:21
23 materials you reviewed as to what Otto Trucking's	12:13:28	23 I mean -- yeah, I don't know whether	12:15:24
24 burn rate is for that development?	12:13:32	24 they're going to get acquired or not. But you know,	12:15:25
25 A No	12:13:35	25 clearly your -- your client is -- is getting a lot	12:15:27
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1 Q Okay. Did -- on the list of materials you	12:13:36	1 of funds from Uber Uber is forwarding -- committed	12:15:29
2 reviewed or at least considered is the Brent Schwarz	12:13:39	2 to forward a lot of funds to your client There --	12:15:32
3 deposition.	12:13:44	3 there is a -- a deal done that your client -- client	12:15:34
4 Do you recall reviewing any portions of	12:13:45	4 will have to accept and Uber can force on your	12:15:38
5 Mr. Schwarz's deposition?	12:13:47	5 client, if they want to	12:15:41
6 A I personally do not.	12:13:48	6 I don't know what their mind-set is right	12:15:43
7 Q You have a separate section of your	12:13:55	7 now, and I don't know how much development on the	12:15:45
8 report -- and we were just covering this with Uber's	12:13:58	8 truck has been done as to whether Uber believes it's	12:15:47
9 counsel -- unjust enrichment related to Trade Secret	12:14:02	9 appropriate to purchase your client	12:15:51
10 No. 90. And I think you have an \$8 million unjust	12:14:04	10 So I don't think it's wild speculation,	12:15:54
11 enrichment figure for that; is --	12:14:08	11 but I clearly do not know whether it will happen or	12:15:56
12 A Yes --	12:14:10	12 not But then all the caveats apply	12:16:00
13 Q -- that right?	12:14:10	13 Q (BY MR. SCHUMAN) Right So far enough	12:16:03
14 A -- that's correct.	12:14:11	14 Taking out the word "speculative" I know we don't	12:16:03
15 Q And that is -- that -- is that based on	12:14:12	15 like using that word The caveats you're referring	12:16:06
16 any Otto Trucking documents or evidence?	12:14:15	16 to regarding the applicability of your unjust	12:16:09
17 A No.	12:14:17	17 enrichment damage theories, those caveats are Uber	12:16:12
18 Q Does that theory have any applicability to	12:14:18	18 acquires Otto Trucking and that Uber shares some of	12:16:17
19 Otto Trucking?	12:14:20	19 the technology it's developing using the allegedly	12:16:21
20 MR. EISEMAN: Objection as to form.	12:14:21	20 misappropriated trade secrets with Otto Trucking; is	12:16:25
21 A You know, I -- no, again, with the same	12:14:22	21 that right?	12:16:28
22 caveats. And -- and I personally believe that my	12:14:26	22 A That's -- that's -- again, that's my	12:16:28
23 work is only relevant unless client is -- you will	12:14:28	23 conclusion -- or that would be my opinion as a	12:16:30
24 have no role at the trial, because your client will	12:14:32	24 damage expert	12:16:33
25 be owned by Uber. And I assume Uber's counsel will	12:14:35	25 Q If both of those assumptions are true,	12:16:33
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1 then your damages opinions -- your unjust enrichment	12:16:36	1 projections from Otto Trucking, right?	12:18:51
2 damages opinions may have some applicability to Otto	12:16:39	2 A Correct I don't believe I have seen any	12:18:52
3 Trucking, correct?	12:16:41	3 projections for your client --	12:18:54
4 MR. EISEMAN: Objection as to form.	12:16:44	4 Q Right	12:18:56
5 A That's fair.	12:16:44	5 A -- and so I poss -- I could not have	12:18:56
6 Q (BY MR. SCHUMAN) You also have a	12:16:49	6 possibly considered them	12:18:58
7 reasonable royalty rate calculation, and that	12:16:52	7 Q Okay You answered my next question, so	12:18:59
8 measures the amount that Uber would have agreed to	12:16:55	8 that'll make us go a little faster	12:19:01
9 pay Waymo in this hypothetical negotiation set in	12:16:57	9 Factor 11 talks about the extent of the	12:19:04
10 the -- somewhere in the December 15 -- August --	12:17:01	10 use of the invention This is addressed at	12:19:06
11 between December '15 and August 2016 time period,	12:17:04	11 paragraphs 424 and 428 of your report And again,	12:19:09
12 right?	12:17:08	12 you find that that factor pushes the base -- the --	12:19:12
13 A Correct.	12:17:09	13 the reasonable royalty baseline up a little bit	12:19:13
14 Q You didn't do any separate calculation of	12:17:09	14 because of your assumptions based on the work of	12:19:17
15 the amount that Otto Trucking would have agreed to	12:17:11	15 others that -- that Uber has used these trade	12:19:21
16 pay Waymo at a hypothetical negotiation set during	12:17:15	16 secrets, right?	12:19:24
17 that same time period, correct?	12:17:20	17 A Yes	12:19:25
18 A That is accurate.	12:17:22	18 Q And you -- you have not done or are -- at	12:19:28
19 Q Okay. And then for the reasonable royalty	12:17:23	19 least -- have -- have you seen any evidence of any	12:19:30
20 calculation that you did, you start with a baseline	12:17:25	20 use of any of these trade secrets by my client, Otto	12:19:33
21 of Uber's unjust enrichment. And then you adjusted	12:17:28	21 Trucking?	12:19:36
22 upward based on some analysis you have done of	12:17:32	22 MR EISEMAN: Objection as to form	12:19:37
23 certain of the Georgia-Pacific factors. Namely 4,	12:17:36	23 A I have not	12:19:37
24 5, 6, 8, and 11, correct?	12:17:38	24 Q (BY MR SCHUMAN) And so your analysis of	12:19:41
25 A Those are the only ones that had any	12:17:42	25 Factor 11 is inapplicable to my client, Otto	12:19:42
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1 impact on changing the number from the baseline	12:17:45	1 Trucking, right?	12:19:46
2 That is correct	12:17:47	2 MR EISEMAN: Objection as to form	12:19:47
3 Q And -- and Factor 5 -- this is addressed	12:17:48	3 A Based on the information that I have at	12:19:48
4 in your report at paragraphs 399 to 401 -- that --	12:17:52	4 this time, that is correct	12:19:50
5 that factor deals with the commercial relationship	12:17:55	5 Q (BY MR SCHUMAN) Okay Mr Wagner, if the	12:19:53
6 between Waymo and Uber and some documents that you	12:17:58	6 jury finds that -- and this is the hypothetical, so	12:19:55
7 referred regarding the -- the potential competitive	12:18:02	7 it's -- follow me here If the jury finds that Uber	12:19:57
8 relationship between those two companies, right?	12:18:08	8 and Ottomotto -- strike that I'm going to start	12:20:01
9 A Yes	12:18:10	9 over	12:20:05
10 Q That analysis in Factor 5 is -- is	12:18:11	10 Hypothetical: If at trial in this case	12:20:05
11 inapplicable to -- to my client Otto Trucking --	12:18:13	11 the jury finds in favor of Uber -- Uber and	12:20:06
12 A Yeah --	12:18:16	12 Ottomotto -- so a defense verdict for them -- but	12:20:10
13 Q -- correct?	12:18:16	13 against Otto Trucking on liability, what's your	12:20:13
14 A -- as discussed in my report, that is	12:18:16	14 opinion as to the damages that Waymo would be	12:20:17
15 correct	12:18:19	15 entitled to as to my client, Otto Trucking?	12:20:20
16 Q Right And -- and Factor 8 deals with	12:18:20	16 MR EISEMAN: Objection as to form	12:20:23
17 expected future profitability And you analyzed	12:18:25	17 A I would need more facts to know if there's	12:20:24
18 Waymo's and Uber's projections for profitability of	12:18:29	18 any relevance of what I have done would apply to	12:20:25
19 autonomous vehicles	12:18:36	19 your client in that hypothetical	12:20:28
20 And in your view, that factor counseled in	12:18:36	20 Q (BY MR SCHUMAN) So as you sit here today	12:20:30
21 favor of some enhancement to the baseline for the	12:18:38	21 based on the work you have done so far up to and	12:20:32
22 reasonable royalty calculation, right?	12:18:42	22 including today, you don't have an opinion of what	12:20:35
23 A That's fair	12:18:44	23 damages Waymo would be entitled to under that	12:20:38
24 Q Okay And -- and you were working with	12:18:45	24 hypothetical verdict --	12:20:40
25 Waymo and Uber projections there, not any	12:18:48	25 MR EISEMAN: Objection	12:20:41
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1 Q (BY MR SCHUMAN) -- is that fair? 12:20:41	1 A Well, you know, I -- well, let me -- let 12:23:06
2 MR EISEMAN: Objection as to form 12:20:43	2 me give you an example of another case that I 12:23:07
3 A I do not 12:20:43	3 testified in last year in a similar fact situation 12:23:10
4 Q (BY MR SCHUMAN) In -- in response to some 12:20:44	4 of this case where there's no product in the market 12:23:13
5 of the questions you got from Uber's counsel, you -- 12:20:50	5 yet. There's regulatory approvals that need to be 12:23:16
6 you mentioned that you personally spent 12:20:55	6 done that weren't done yet; that there would be no 12:23:20
7 approximately 64 hours total working on -- working 12:20:58	7 commercialization for years into the future. And I 12:23:21
8 on your opinions in this case Obviously, your 12:21:01	8 had the business plans of the company that took the 12:23:24
9 staff spent many more hours than that 12:21:04	9 trade secrets. 12:23:30
10 Approximately what percentage of your 12:21:06	10 Now, there they provided me the model, and 12:23:31
11 64 hours, Mr Wagner, did you spend focusing on 12:21:09	11 they never made a calculation of what the impact 12:23:36
12 calculating damages specific to my client, Otto 12:21:14	12 would be on them to accelerate the development by 12:23:39
13 Trucking? 12:21:16	13 any amount of time. I had to get into their model, 12:23:43
14 A Zero 12:21:17	14 understand the logic, and make that calculation 12:23:46
15 Q Just bear with me a second 12:21:25	15 myself. 12:23:47
16 A But I could -- the approximate -- it's 12:21:27	16 In this case I have the same thing in that 12:23:49
17 exactly 64 0 hours through September 15 And it's 12:21:30	17 I have projections done at the time of the alleged 12:23:51
18 been 13 4 hours since then before today 12:21:36	18 theft by the party who was alleged to have taken the 12:23:55
19 Q I would -- 12:21:39	19 trade secrets. 12:23:59
20 A -- between September 15 and today 12:21:40	20 But they have even gone to the next step 12:24:01
21 Q In response to some questions from Uber's 12:21:44	21 of actually quantifying the impact of acceleration, 12:24:04
22 counsel, I think you made clear that your damages 12:21:45	22 and so that's why I say it's the Rosetta Stone. 12:24:07
23 are based on Uber's use of -- alleged use of the 12:21:46	23 Normally I have to do more work than I did in this 12:24:09
24 trade secrets in its development of its autonomous 12:21:53	24 case, but Uber has done it for me. 12:24:12
25 vehicles 12:21:56	25 Q Right. And have you seen any similar 12:24:17
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1 If the evidence at trial shows that my 12:22:01	1 documents from my client, Otto Trucking? 12:24:20
2 client, Otto Trucking, has not used any of those 12:22:04	2 A I knew that was next question The answer 12:24:23
3 trade secrets, would you agree with me that your 12:22:07	3 is no And you're closing the loop 12:24:25
4 opinions are irrelevant to Otto Trucking? 12:22:10	4 MR SCHUMAN: Why don't we take a 12:24:32
5 MR EISEMAN: Objection as to form 12:22:13	5 two-minute break I don't think I have anything 12:24:33
6 A I'm not giving you a legal opinion But 12:22:16	6 more, but why don't we just -- 12:24:36
7 as -- my judgment as a damage expert, you are 12:22:17	7 MR BERRY: I actually have a couple of 12:24:36
8 correct 12:22:20	8 questions 12:24:38
9 Q (BY MR SCHUMAN) You mentioned that you 12:22:29	9 MR SCHUMAN: Well, I'm not sure I'm done 12:24:38
10 had documents in this case from Uber with its own 12:22:31	10 yet I just want to -- 12:24:40
11 modeling of the benefits of -- of -- well, let me -- 12:22:38	11 MR BERRY: Okay 12:24:41
12 let me ask it -- strike that Let me start that 12:22:44	12 MR SCHUMAN: -- take a two-minute break 12:24:41
13 question again 12:22:47	13 and make sure And then if you have something else 12:24:41
14 Do you remember some testimony you gave in 12:22:48	14 MR BERRY: Okay 12:24:44
15 response to Uber's counsel where you characterized 12:22:49	15 MR SCHUMAN: -- you guys can take that 12:24:45
16 some of the information you got from -- that you 12:22:52	16 up 12:24:46
17 were able to review from Uber as the Rosetta Stone 12:22:55	17 THE VIDEOGRAPHER: It's 12:24 p m We're 12:24:47
18 in your field? 12:22:57	18 going off the record 12:24:49
19 Do you remember that -- 12:22:59	19 (A break was taken from 12:24 p m to 12:24:51
20 A I -- 12:22:59	20 12:28 p m) 12:25:12
21 Q -- testimony? 12:22:59	21 THE VIDEOGRAPHER: We are back on the 12:28:09
22 A -- do remember that 12:23:00	22 record It's 12:28 p m 12:28:09
23 Q And -- and what is the information again 12:23:01	23 Q (BY MR SCHUMAN) Mr Wagner, did either 12:28:15
24 that you characterize as being the Rosetta Stone in 12:23:03	24 the Quinn firm or Waymo ask you or your firm to 12:28:17
25 your field? 12:23:05	25 prepare any damages opinions specific to my client, 12:28:22
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1 Otto Trucking?	12:28:27	1 off the record.	12:30:37
2 A I don't recall that specific instruction	12:28:28	2 (Off video record.)	12:30:37
3 Q As you sit here today, do you plan to do	12:28:31	3 MR. BERRY: Please go ahead and mark this	12:30:42
4 any work between now and the time of trial on	12:28:33	4 AEO.	12:30:44
5 developing opinions regarding damages specific to my	12:28:38	5 MR. EISEMAN: Right. And we'll handle the	12:30:46
6 client, Otto Trucking?	12:28:45	6 actual redactions consistent with the judge's	12:30:47
7 A No	12:28:46	7 practice in the case.	12:30:51
8 MR. SCHUMAN: Okay I have no further	12:28:47	8	12:30:52
9 questions for you Thank you for your time	12:28:49	9 (TIME NOTED: 12:30 p.m.)	12:30:52
10 A Thank you	12:28:52	10	
11 MR. EISEMAN: Mr Berry, what do you	12:28:56	11	
12 consider this -- these questions? Do you consider	12:28:58	12	
13 them to be redirect?	12:28:59	13	
14 MR. BERRY: I haven't even thought about	12:29:02	14	
15 how to characterize it	12:29:03	15	
16 EXAMINATION BY COUNSEL FOR THE DEFENDANTS	12:29:08	16	
17 BY MR. BERRY:	12:29:12	17	
18 Q Mr Wagner, I had a -- a couple of	12:29:12	18	
19 questions The first is: Your opinions in this	12:29:13	19	
20 case assume that Uber is going to go to market and	12:29:15	20	
21 commercialize its AV technology using the Fuji	12:29:19	21	
22 LiDAR, right?	12:29:23	22	
23 MR. EISEMAN: Objection as to form	12:29:24	23	
24 A I -- again, I -- I think that's assumed	12:29:24	24	
25 But again, that's a better question for	12:29:27	25	
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1 Dr. Hesselink. But that's the current product that	12:29:30	1 I, MARY J. GOFF, CSR No. 13427, Certified	
2 I believe he is the opinion uses the trade secrets.	12:29:33	2 Shorthand Reporter of the State of California,	
3 Q (BY MR. BERRY) And you rely on	12:29:38	3 certify;	
4 Dr. Hesselink on --	12:29:41	4 That the foregoing proceedings were taken	
5 A I do.	12:29:41	5 before me at the time and place herein set forth, at	
6 Q -- that? And if Uber does, in fact, does	12:29:41	6 which time the witness declared under penalty of	
7 not go to market with the Fuji LiDAR, your opinion	12:29:43	7 perjury; that the testimony of the witness and all	
8 is they are not applicable, right?	12:29:46	8 objections made at the time of the examination were	
9 MR. EISEMAN: Objection as to form.	12:29:48	9 recorded stenographically by me and were thereafter	
10 A Incomplete hypothetical. If they then do	12:29:49	10 transcribed under my direction and supervision; that	
11 something else that has no use of the trade secrets,	12:29:51	11 the foregoing is a full, true, and correct	
12 the answer would be yes.	12:29:54	12 transcript of my shorthand notes so taken and of the	
13 Q (BY MR. BERRY) For example, if Uber were	12:29:55	13 testimony so given;	
14 to go back to -- and use Velodyne and go to market	12:29:57	14 That before completion of the deposition,	
15 with Velodyne LiDAR, there would be no damages,	12:30:01	15 review of the transcript () was (XX) was not	
16 right?	12:30:04	16 requested: () that the witness has failed or	
17 MR. EISEMAN: Objection as to form.	12:30:04	17 refused to approve the transcript.	
18 A Again, as a damage expert, that would be	12:30:05	18 I further certify that I am not financially	
19 my opinion, if you asked me.	12:30:07	19 interested in the action, and I am not a relative or	
20 MR. BERRY: No further questions. Thank	12:30:09	20 employee of any attorney of the parties, nor of any	
21 you.	12:30:10	21 of the parties.	
22 THE VIDEOGRAPHER: All right. This will	12:30:12	22 I declare under penalty of perjury under the	
23 conclude the deposition of Mr. Wagner, consisting of	12:30:15	23 laws of California that the foregoing is true and	
24 two original video discs, which will be retained by	12:30:18	24 correct, dated this 23rd day of September, 2017.	
25 Veritext. The time is 12:30 p.m., and we're going	12:30:23	25  MARY J. GOFF, CSR No. 13427	
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